IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MRS. SAMUEL E. ALLGOOD, INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF SAMUEL E. ALLGOOD, MARCUS ALLGOOD, AND MALCOLM ALLGOOD,	:	
PLAINTIFFS	:	C. A. NO. H-91-0158
VS.	:	
R. J. REYNOLDS TOBACCO COMPANY, THE AMERICAN TOBACCO COMPANY, THE TOBACCO INSTITUTE, INC., AND THE COUNCIL FOR TOBACCO RESEARCH-U.S.A., INC.	:	
DEFENDANTS	:	

DEPOSITION OF J. RAY HAYS, Ph.D.

March 29, 1994

ORIGINAL

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10 COMPANY, THE AMERICAN :
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11 TOBACCO INSTITUTE, INC., AND :
THE COUNCIL FOR TOBACCO :
12 RESEARCH-U.S.A., INC. :
:
13 DEFENDANTS :

14

15 DEPOSITION OF J. RAY HAYS, Ph.D.

16

17 taken on the 29th day of March, 1994, beginning at 2:00
18 p.m. in the law offices of Cruse, Scott, Henderson &
19 Allen, L.L.P, Two Houston Center, Suite 1850, 909 Fannin,
20 Houston, Texas 77010-1007, before Donna J. Sorenson, a
21 Certified Shorthand Reporter and Notary Public in Harris
22 County for the State of Texas pursuant to notice and the
23 following stipulations of counsel:
24 IT WAS STIPULATED AND AGREED by and between
25 counsel for the respective parties hereto that the

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1 deposition shall be taken pursuant to the Federal Rules of
2 Civil Procedure.
3 IT WAS FURTHER STIPULATED AND AGREED that the
4 witness may have the opportunity to read his deposition
5 and sign it before any notary public.
6
7
8
9 A P P E A R A N C E S:
10
11 FOR THE PLAINTIFFS:
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13 Houston, Texas 77036
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FOR THE DEFENDANT R. J. REYNOLDS TOBACCO COMPANY:
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Scott Allen, Esq.
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22 Houston, Texas 77010-1007
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30 Rockefeller Plaza
25 New York, N. Y. 10012

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J. RAY HAYS, Ph.D.,

called as a witness, having been first duly sworn on his oath, testified as follows:

E X A M I N A T I O N

BY MR. HOLFORD:

Q. State your full name, sir.

A. James Ray Hays.

Q. I'm Doug Holford. I represent the plaintiffs in this action, being Bonnie Allgood, Marcus Allgood, Malcolm Allgood, the wife and sons of Samuel Edward Allgood.

Where do you reside, sir?

A. In Harris County. My address is 2245 Maroneal, Houston.

Q. And what is your phone there?

A. 664-3989.

Q. And what is your business address as you give it for people visiting you?

A. Harris County Psychiatric Center.

Q. Just that, your name and that?

A. Well, if they want to mail me something, I give them a post office box number, Post Office Box 20249.

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1 Q. All right. But are you, most of your professional
2 time, at the Harris County Psychiatric Center?
3 A. Yes, 60 to 70 percent of my time is spent out there
4 at the Harris County Psychiatric Center.
5 Q. What is the address of that center?
6 A. 2800 South MacGregor Way.
7 Q. Now, we have never met nor have we ever talked
8 before; is that right?
9 A. No, sir.
10 Q. Is that correct?
11 A. That's correct.
12 Q. What is going to be your charge for this deposition
13 time?
14 A. The university charges $130 an hour for my time.
15 Q. I gather that -- does that money go the university?
16 A. Yes.
17 Q. Is that the general rule whenever you give a
18 deposition?
19 A. Yes. It's not the general rule. It's the rule.
20 Q. Just plain the rule?
21 A. That's right.
22 Q. And do you have that same arrangement if you testify
23 at trial?
24 A. Yes.
25 Q. What is your Social Security number, sir?

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1 A. 414-72-7995.
2 Q. And so, if I make out the check, should it be made to
3 the University of Texas --
4 A. Yes.
5 Q. -- Health Science Center, I suppose.
6 A. That's right. Department of Psychiatry.
7 Q. And what is your date of birth?
8 A. December 27, 1942.
9 Q. Where?
10 A. Memphis.
11 Q. Where were you raised?
12 A. In East Tennessee, mostly. I left Memphis when I was
13 two years old and lived most of my life in Rossville,
14 Georgia, or Chattanooga, Tennessee.
15 Q. Are they very close?
16 A. Yes.
17 Q. Does your work now consist mostly of forensic
18 psychology and work on the insanity defense?
19 A. No.
20 Q. Would you describe your work now?
21 A. I'm a faculty member in the department of psychiatry
22 at the University of Texas Medical School, Houston.
23 My principal work assignment is at the Harris County
24 Psychiatric Center as a psychologist.
25 In addition to the patient care that I provide,

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1 I teach classes and conduct research activities.
2 Part of the clinical work that I do involves
3 forensics psychiatry, and I also teach forensic
4 mental health.
5 Q. And are the things you mentioned after being at the
6 Harris County Psychiatric Center all done at that
7 center?
8 A. Most of them are done at the Psychiatric Center.
9 Some of the activities, including patients that I
10 see, are seen at the University of Texas Mental
11 Science Institute, which is located at 1300 Moursund
12 Avenue. That's in the Medical Center.
13 And then some of the teaching that I do and some
14 of the meetings I attend are in the medical school,
15 which is located on Fannin Street.
16 Q. Is the building on Moursund at the corner of Moursund
17 and what?
18 A. John Freeman, I think. It's 1300 Moursund.
19 Q. Across from TIRR?
20 A. Yes.
21 Q. What general subject matters do you cover in your
22 teaching and research?
23 MR. SHEFFLER: Objection. I think
24 it's overbroad and object to the form of
25 the question on that ground.

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1 A. The teaching that I do principally has to do with
2 mental health law. For example, at noon, I had a
3 lecture on involuntary civil commitment to the
4 first-year residents at the Harris County Psychiatric
5 Center; and yesterday, we dealt with the issue of
6 confidentiality and privilege. And we'll be dealing
7 with those kinds of issues that relate to the
8 practice of either psychology and psychiatry as they
9 occur in a legal context over the year.
10 Actually, for the psychiatric residents, I'll be
11 teaching them over a course of four years, since they
12 are in the residency program four years.
13 Psychology students are with us only for a year;
14 so, the lectures I give to them are much more
15 condensed than I do for psychiatric residents.
16 The research activities I'm involved in right
17 now are principally associated with validation of
18 neuropsychological tests in psychiatric populations.
19 Q. (By Mr. Holford) Is that regarding tests of the human
20 body system, the neuropsychological system?
21 A. Well, they are paper and pencil tests. They are not
22 like blood tests.
23 Q. Right. Okay.
24 A. They are paper and pencil tests that the patients
25 take, and we use various norms against which to judge

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1 the patient's abilities. And these norms for a lot
2 of the neuropsychiatric tests are not appropriate for
3 psychiatric patients in renorming those tests so
4 that they fit for a psychiatric population.
5 Q. What kind of things are you testing for there?
6 A. Principally, cognitive functioning. How well an
7 individual's brain works, what their memory function
8 is like, and things like that.
9 MR. CRUSE: What?
10 Q. (By Mr. Holford) And do I recall that you are a
11 licensed lawyer as well?
12 A. Yes.
13 Q. Do you practice law, per se?
14 A. I have only one client right now; and as soon as I'm
15 through with his problem, I will not take anymore law
16 cases.
17 The only practice I have done since I have been
18 licensed is administrative law, specifically, before
19 the Board of Examiners of Psychologists.
20 Q. All right.
21 A. I don't take any general law cases.
22 Q. And as a faculty member at the UT Health Science
23 Center, are you a full professor?
24 A. Yes.
25 Q. Dr. Hays, you have given depositions before, I

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1 gather.
2 A. Yes.
3 Q. So you understand that the effect of your answers
4 given here under oath are the same as though you were
5 at the trial of this case on the stand, sworn and
6 giving answers there. Do you understand that?
7 A. Yes.
8 Q. If I ask you a question and for any reason you don't
9 understand it, will you not attempt to answer it; but
10 stop me and say you don't understand that question?
11 Will you do that?
12 A. Yes.
13 Q. So if, after the reporter, Ms. Sorenson, here
14 finishes the transcript and I have it later and I'm
15 reading from it and I read my question followed only
16 by your answer, do we fairly understand then that, in
17 giving that answer, you understood that question?
18 A. Yes.
19 Q. Now, I would like to get where -- how much you have
20 testified under oath before.
21 Have you ever testified as a fact witness?
22 A. I recall only one case in which I was subpoenaed to
23 testify as a fact witness, and that involved a drunk
24 driving case. That was 25 years ago, criminal court
25 here in Harris County; and I'm not sure I ever

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1 testified. I know I went to court several times, and
2 it kept getting delayed.
3 Q. It used to be a problem in Harris County, right?
4 A. That's right.
5 Q. You were a witness to the accident, right?
6 A. Yes.
7 Q. So any other testimony under oath you have given has
8 been as an expert?
9 A. Yes.
10 Q. Okay. Now, have you testified as an expert at trial
11 before?
12 A. Yes.
13 Q. How many times?
14 A. I don't know. I have been doing this kind of work
15 for about 25 years; so, it's hard for me to be able
16 to give you an accurate estimate of how many times
17 I've testified either by deposition or at trial.
18 Q. Okay.
19 A. Usually, it's not more than once or twice a year that
20 I have my deposition taken or I appear at trial.
21 Q. Is there a single type of testimony that you offer as
22 an expert at trial when you do testify at trial?
23 MR. SHEFFLER: Object to form.
24 Q. (By Mr. Holford) I'm speaking of what the point of
25 your testimony is or why you're there. Or does that

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1 vary --

2 MR. SHEFFLER: It's an expert opinion

3 so object to form.

4 A. I'm there because I'm a psychologist, and I'm asked

5 for my expert opinion on the issues at trial.

6 Q. (By Mr. Holford) And what I'm -- I guess what I'm

7 trying to get at is: Has the subject matter that you

8 have spoken on as an expert at trial been repetitive?

9 A. No.

10 Q. How many different types of subject matter

11 testimonies have you given as an expert at trial?

12 A. Well, do you mean civil and criminal and so on? I'm

13 not sure I understand.

14 Q. We can start with that.

15 A. Okay.

16 Q. You have given both sides?

17 A. Well, and I have testified in juvenile courts, too,

18 so...

19 Q. All right. In juvenile courts, has it always been a

20 matter of child custody?

21 A. No. These are juvenile criminal cases.

22 Q. All right.

23 A. Quasi criminal, I guess.

24 Q. Are you testifying to the state of mind of the

25 defendant?

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1 A. Sometimes. Sometimes to their -- on the issue of
2 whether or not they should be transferred to the
3 adult courts and so on, waiver of jurisdiction by the
4 juvenile courts.
5 Q. Do those two type subject matters cover what you have
6 done in juvenile court?
7 A. Well, what two did you write down?
8 Q. I wrote down state of mind and whether they should be
9 tried as an adult.
10 A. I think that pretty much covers it, yes.
11 Q. Okay. And then, in the criminal courts, I gather one
12 subject would be insanity defense --
13 A. Yes.
14 Q. -- is that right? Any others?
15 A. Competency to stand trial. Issues of mitigation of
16 punishment.
17 Q. Any others? That you can think of, I mean.
18 A. No. Broadly speaking, I think that would cover it.
19 Q. And then in the civil courts?
20 Can you remember how many times you have
21 testified as an expert in civil court?
22 A. No. I don't keep track of that.
23 Q. All right. What would be the subject matters there?
24 A. Well, I have been involved in some toxic tort
25 litigation, including the Brio Site, Slaughter versus

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1 Farm and Home Savings. I do remember the cite on
2 that one. A Texas City refinery problem, whatever
3 you want to call it, when the hydrofluoric gas
4 release occurred. I testified in that by deposition.
5 Q. And in that one, were you speaking to, what, emotional
6 damage? Mental damage?
7 A. We were talking about the mental and emotional
8 suffering the individuals had.
9 Q. Okay.
10 A. I was on the defense side in both the Slaughter
11 versus Farm and Home Savings case and the Texas City
12 case.
13 I'm trying to think of the cite on a malpractice
14 case against a psychiatric facility. Wasson versus
15 West Branch, I think, was the style of the case.
16 I testified on the plaintiff's side in that
17 particular case, and that was at trial as well as in
18 deposition.
19 Q. Was that the standard of care applicable to such a
20 unit?
21 A. Yes. Those are examples of the kind of work that I
22 have done in the civil area, in addition to child
23 custody cases, which I do not do anymore, and some
24 other litigation, divorce litigation, and so on.
25 Q. In the family civil courts, in other words?

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1 A. Yes, right.
2 Q. Okay. Can you recall your testifying as an expert in
3 the case of any other products, any product -- say,
4 product liability or anything to do with a product?
5 A. I don't recall any.
6 Q. Does that cover your testimony as a trial expert that
7 you can recall now as to testimony in the various
8 courts you have given?
9 A. Well, I have testified about a half dozen times, I
10 guess, in Federal Courts, both civil and criminal.
11 The criminal actions have been the mental and
12 emotional state of individuals who were alleged to
13 have committed a Federal offense.
14 I remember one case that involved a woman who
15 had a gun and some cocaine within a certain number of
16 feet of a school, and I evaluated her and testified
17 at, I guess it was, a competency hearing. And she
18 was sent to Springfield, Missouri, to the Federal
19 Correctional Center, where they do evaluations and
20 treatment of individuals to try to return her to
21 competency because she was not competent.
22 Even though I was hired by the United States
23 Attorney's office, my testimony in that case was that
24 she was not competent.
25 Q. You gave the testimony as you saw your evaluation

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1 rendered, right?
2 A. Right. I testified in the Couch Mortgage case.
3 Q. Was that civil or criminal?
4 A. I'm not sure what it was. It was -- the issue that I
5 was testifying on, regardless, was, you know, the
6 competency of Dean Couch.
7 Q. To stand trial?
8 A. Yes.
9 Q. Because he had a lot of problems, didn't he?
10 A. Yes, he did.
11 And then there have been another several cases
12 in the Federal courts. And, principally, I have been
13 hired by the United States Attorney's office in those
14 cases.
15 Q. To do either mental state or competency to stand
16 trial, that type of thing?
17 A. Right.
18 Q. So, in the Federal courts, you have not testified in
19 any case involving a product --
20 A. No.
21 Q. -- right? Now, you have mentioned that some of the
22 these cases you have also been deposed in them. As
23 to any depositions you have given, have they been in
24 any -- has your testimony involved any subject matter
25 other than what we have already covered for the

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1 trials?
2 A. Well, I'm not sure I have covered every trial and
3 every deposition I have been in; but, in general,
4 those are the areas in which I have done work, yes.
5 Q. Both in trial and deposition, in other words?
6 A. Yes.
7 Q. But if I conclude that you have not given any expert
8 testimony in any product case, are you more a hundred
9 percent sure that that is true, that you have not
10 given any in that kind of case?
11 MR. SHEFFLER: Objection. Dr. Hays
12 testified he doesn't recall giving
13 testimony in a product liability case. I
14 believe you're mischaracterizing his
15 testimony.
16 Q. (By Mr. Holford) My question is in the nature, if you
17 had, don't you believe you would recall it?
18 MR. SHEFFLER: Objection. Obviously,
19 if he didn't recall it, he doesn't recall
20 it.
21 MR. HOLFORD: All right.
22 A. I've given you what I can recall off the top of my
23 head.
24 Q. Have you -- perhaps you can be certain on this one.
25 Have you given any testimony in any case involving

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1 tobacco?
2 A. No.
3 Q. No deposition either?
4 A. That's correct.
5 Q. Have you ever been hired as a consulting expert where
6 it didn't turn into being a testifying expert?
7 A. Yes.
8 Q. Okay. Is there a number -- can you put a number on
9 that?
10 A. Yes. Probably more cases I get involved in don't go
11 to trial or don't go to deposition than do, but I
12 can't give you a number.
13 Q. Well, I think the difference is not perhaps whether
14 it goes to deposition or trial but whether your name
15 is published in the case as a testifying expert or
16 not published at all because you are simply a
17 consulting expert.
18 MR. SHEFFLER: Objection to the form.
19 Is there a question?
20 MR. HOLFORD: Not yet, Mr. Sheffler.
21 MR. SHEFFLER: Okay. Then I object to
22 all that colloquy.
23 Q. (By Mr. Holford) And so does that meet your
24 understanding of what a consulting expert is as
25 opposed to being retained as a testifying expert?

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1 MR. SHEFFLER: Object to the
2 question. I don't know what definition
3 you're giving to consulting expert. It's
4 an ambiguous question to me. If Dr. Hays
5 understands what you're trying to ask, then
6 he can answer it, but I think your question
7 is ambiguous and I object to the form.
8 MR. HOLFORD: You're getting wordy
9 Mr. Sheffler. The definition is what you
10 just called colloquy.
11 MR. SHEFFLER: Well, obviously it's
12 objectionable then.
13 Q. (By Mr. Holford) Do you understand where we're at,
14 Dr. Hays; or do you want me to repeat something?
15 A. Yes. 18th floor.
16 MR. CRUSE: I was going to say that,
17 but I thought would I get in trouble.
18 MR. HOLFORD: That's a valid answer;
19 however, not the one I sought.
20 Q. Do you want me to repeat my question, or do you
21 understand what I'm asking?
22
23 (Talking at the same time.)
24
25 A. Well, perhaps my definition of consulting expert and

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1 testifying expert are a little different than yours.
2 As far as I'm concerned, I'm a consultant until I
3 start testifying; and maybe, if I do my job well
4 enough, I don't ever have to testify. So...
5 Q. You're speaking of educating the party that hired
6 you?
7 A. That's right. And, as I said, perhaps your
8 definition is a little different.
9 Q. All right. Yes. I give it from the trial lawyer --
10 the person hiring you and --
11 MR. SHEFFLER: Is there a question
12 here?
13 MR. HOLFORD: Yes, it's coming. It's
14 coming, Mr. Sheffler.
15 MR. SHEFFLER: Well, ask the question
16 then.
17 Q. (By Mr. Holford) -- and so let me put it that way. I
18 want to keep it that way.
19 Or are you saying that you don't really know
20 what the lawyer who hires you has done as far as
21 listing you in the case or not?
22 MR. SHEFFLER: Objection. Are you
23 referring to a specific case?
24 MR. HOLFORD: In any case.
25 Q. I mean, do you generally know that; or do you

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1 generally not know that?
2 A. Sometimes, I know the lawyer has listed me as an
3 expert; sometimes, I do not.
4 Q. Okay. So do you understand that if the lawyer does
5 list you at all, you have to have been a testifying
6 expert, because consulting only experts are not
7 listed?
8 MR. SHEFFLER: Objection. He gave you
9 his definition of what he believes to be a
10 consulting expert versus a testifying
11 expert. I object to the form of the
12 question.
13 Q. (By Mr. Holford) Okay. So, on that definition of a
14 consulting expert --
15 MR. SHEFFLER: Well, what definition?
16 Q. (By Mr. Holford) -- where you have known, when you
17 were hired, that you were, until further notice,
18 going to be for consulting only and your name was not
19 going to be published to the other side, has that
20 happened?
21 MR. SHEFFLER: Object to the form.
22 A. Yes.
23 Q. (By Mr. Holford) Is there a number you can put on
24 that?
25 A. No.

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1 Q. Still a lot, in other words?
2 A. Yes.
3 MR. ALLEN: Object to the form.
4 Q. (By Mr. Holford) Okay. Now, have any of those
5 experiences as a consulting expert, either by my
6 definition or yours, involved a tobacco case?
7 MR. SHEFFLER: Object to the form of
8 the question.
9 A. No.
10 MR. CRUSE: That was a long way to get
11 there, a long winding road.
12 MR. HOLFORD: I changed my mind
13 mid-stream, Mr. Cruse. Seeing the lay of
14 the land, I changed course.
15 Q. Sir, do you --
16 MR. SHEFFLER: You sure fooled us.
17 Q. (By Mr. Holford) Do you smoke or use tobacco?
18 A. Not presently, no.
19 Q. Did you smoke cigarettes?
20 A. I probably in my lifetime smoked fewer than a pack of
21 cigarettes.
22 Q. What about any other form of tobacco?
23 A. I used pipes for several years and I smoked cigars
24 for several years and occasionally chewed tobacco,
25 principally, when I was visiting my brother, since he

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1 chews tobacco.
2 Q. Does he live in North Georgia?
3 A. Well, actually, he lives in East Tennessee; but when
4 I see him, it's usually in North Georgia at my
5 parents' home. The state line is not that important
6 to people that live there, you know.
7 Q. It's not actually drawn on the earth; isn't that
8 right?
9 A. That's right.
10 Q. Now, how old were you when you ever first tried a
11 tobacco product?
12 A. I was probably in college.
13 Q. What was that product?
14 A. Well, I started smoking pipes when I was in college;
15 and I don't know whether I first smoked a cigar or
16 cigarette or pipes -- oh, I do remember, too. I was
17 a senior in high school and a friend of mine and I
18 were driving to Florida and we smoked some cigars on
19 our way to Florida.
20 Q. Did you at some point come to either smoking or
21 chewing daily?
22 A. Yes, I smoked cigars daily for a while.
23 Q. Did you reach a leveling off of how many you smoked a
24 day?
25 A. Yes.

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1 Q. What was that amount?
2 A. Oh, probably not more than two or three a day.
3 Q. Did your use of tobacco continue fairly regularly for
4 as long as you then ended up using tobacco, or was it
5 broken up into periods?
6 MR. SHEFFLER: Object to the form of
7 the question as compound and, also, "fairly
8 regularly" as being ambiguous.
9 A. Yeah, I'm not sure I understand the question.
10 Q. (By Mr. Holford) Well --
11 A. Did I smoke cigarettes or did I smoke cigars for an
12 extended period of time? Yes. Would I not smoke
13 them for a while? Yes. And then smoke them again?
14 Sure.
15 Q. And at some point, did you switch to a pipe?
16 A. No. It was the other way around. I smoked pipes
17 first. That was my principal tobacco use during the
18 college years and graduate school years.
19 Q. Okay. So it was after your graduate schooling that
20 you started smoking cigars?
21 A. Yes.
22 Q. Was that after all of your formal education?
23 A. Well, I moved to Houston in 1968; and I wasn't
24 through with my Ph.D. yet. And I didn't smoke pipes
25 for very long after moving to Houston; it was more

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1 cigars. That's about the time period that I switched
2 from pipes to cigars, about 1968 or '69.
3 Q. Okay.
4 A. So I didn't finish my Ph.D. until 1970. And then, of
5 course, I went to law school later; so, I was smoking
6 cigars primarily while in law school.
7 Q. What was the year you started college?
8 A. 1960.
9 Q. 1960? Did you actually chew, or did you just snuff?
10 A. Never used snuff, no. Just chewing tobacco.
11 Q. When was that?
12 A. Probably from -- this was very rarely that I would do
13 this. Probably from 1966 or '7, the next several
14 years. Every time I would visit my parents' home, my
15 brother and I would walk around the farm and
16 sometimes he would chew tobacco and sometimes we both
17 would chew tobacco.
18 Q. Did your parents not like smoking in the house?
19 A. No, they did not.
20 Q. Does that have something to do with your chewing
21 instead?
22 A. No.
23 Q. So when did you have your last tobacco product ever?
24 A. Well, probably chewing tobacco with my brother a few
25 years ago.

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1 Q. Up to that time, had you either smoked a pipe or
2 smoked cigars on a fairly daily basis?
3 MR. SHEFFLER: Object to the form of
4 the question.
5 A. I'm trying to think when I last smoked cigars. It
6 was probably in the middle to late 1970s that I
7 stopped smoking cigars, and so any tobacco use
8 thereafter would have been chewing tobacco.
9 Q. (By Mr. Holford) And that was very irregular; in
10 other words --
11 A. Yeah.
12 Q. -- just when you visited home?
13 A. That's correct.
14 Q. Did you make a decision at some point that you would
15 no longer use any tobacco product?
16 A. No.
17 Q. So you still might if you went home, in other words?
18 A. I didn't the last time I saw my brother. When he
19 offered me some chewing tobacco, I didn't take him up
20 on it; but I might at some point.
21 Q. So, in your use-of-tobacco experience, were you ever
22 addicted?
23 A. Well, I don't know what the term, "addiction," means
24 for you; but I certainly would not characterize
25 myself as addicted.

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1 Q. At any time?
2 A. No.
3 Q. Is that correct?
4 A. That's correct.
5 Q. Did you bring a curriculum vitae?
6 A. I did.
7 Q. May I see that, please?
8 A. Yes. I brought three copies. You-all can share
9 this, if you want to.
10 You had asked in your request for production a
11 copy of my current CV, and this one is from September
12 1993.
13 Q. That's as current as you have?
14 A. I update it annually; and it's as current as I have,
15 yes.
16 MR. HOLFORD: Okay. All right.
17
18 (Hays Exhibit No. 1 was
19 marked for identification.)
20
21 Q. I think my last question was incomplete.
22 Dr. Hays, at any time in your experience in
23 using tobacco, were you addicted to nicotine?
24 MR. SHEFFLER: Object to the form.
25 A. No.

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1 Q. (By Mr. Holford) You see we have marked as Hays
2 Exhibit No. 1 what you have handed me as your
3 curriculum vitae. Do you see that?
4 A. Yes.
5 Q. Is that curriculum vitae as complete as you could
6 make it through September '93?
7 A. Yes.
8 Q. Is it all true?
9 A. Yes. There's some duplications in there, I noticed.
10 When we did the 1993 copy of the CV, there were
11 several chapters that got duplicated. Those have
12 been eliminated in here.
13 Also, I noticed that one of the articles that
14 you requested was a duplicate.
15 Q. Oh, the psychologist as an expert? I think one of
16 those was, yes.
17 A. I think it was -- B-41 and B-44 are the same
18 articles; so, they just appear twice on the CV. And
19 I obviously have got to get that cleared up.
20 But, yes, it's accurate.
21 Q. And I think you said, when you were referring to your
22 past CV, you said September '93 again; and you meant
23 the --
24 A. I meant the September '92, whatever you were provided.
25 Q. I think it's November '92.

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1 A. All right.
2 Q. But that's the one you meant, right?
3 A. Yes.
4 Q. Okay. Now, has any of the studies or other work
5 described in your curriculum vitae, Exhibit 1,
6 involved tobacco use?
7 A. Well, are you talking about the incidence of
8 prevalent studies? That is, for example --
9 Q. Anything, yes.
10 A. A number of the articles that I did -- a number of
11 the studies that I did involved tobacco use among
12 other substances, yes.
13 Q. And what was the involvement of the tobacco in the
14 articles?
15 MR. SHEFFLER: Objection. Form.
16 MR. RILEY: Objection. Form.
17 Q. (By Mr. Holford) You said tobacco among other
18 substances; so, I want to know what you wrote about
19 concerning tobacco.
20 MR. SHEFFLER: Read the article.
21 Object to the form of the question.
22 A. The drug surveys that I did were intended to
23 discover the extent of tobacco use and other
24 substance use among various populations. We studied
25 both school populations here in the United States and

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1 in other countries and we studied various school
2 districts here in the Houston area and we were trying
3 to find not only the extent of substance use, but the
4 correlates of substance use in order to target
5 education programs and treatment programs in those
6 populations that needed it the most.
7 Q. (By Mr. Holford) Did you say correlate?
8 A. Yes.
9 Q. Correlate data or -- what is that?
10 A. We were trying to find, for example, those
11 demographic characteristics or other characteristics,
12 such as socioeconomic status, that might indicate an
13 individual is more likely to use particular types of
14 substances or not.
15 Q. Now, have you described the extent of what you were
16 concerned about with tobacco in these articles you
17 mentioned?
18 MR. SHEFFLER: Object to form.
19 A. I'm not sure I understand the question.
20 Q. (By Mr. Holford) Well, is there anything -- how many
21 articles are you talking about in there? Is it more
22 than a few? Perhaps you can read the numbers of
23 them.
24 A. Now, we're just limiting this to tobacco use?
25 Q. Yes.

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1 A. All right. The articles are beginning on page 7,
2 Article B-2, B-4, B-5, B-9, B-12, B-14, B-17, B-18,
3 B-54, D-1. Those are the articles or the chapters
4 that I have published that I can recall have some
5 information about the incidence or prevalence of
6 tobacco use that appear on my CV.
7 Q. All right. Your CV does show everything that you
8 have published, right?
9 A. I think I did one Op-Ed piece that's not on there,
10 yes; but aside from that, everything else I have
11 written is on there.
12 Q. What is Op-Ed?
13 A. Yeah. Op-Ed is when you write a letter to the
14 editor, essentially. It means opposite the editorial
15 page.
16 Q. Oh, I see. Was that a Houston paper?
17 A. Yes. Houston Chronicle.
18 Q. When was that?
19 A. A long time ago.
20 Q. All right.
21 A. It was in the 1970s.
22 Q. So, all of the articles that you just designated,
23 starting with B-2 and ending with D-1, all dealt with
24 the relevance of tobacco use?
25 MR. SHEFFLER: Objection to the

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1 form. Is that the end of your question?
2 MR. HOLFORD: Yes.
3 MR. SHEFFLER: Objection to the form.
4 A. Okay. Not solely tobacco use but use of lots of
5 different substances.
6 Q. (By Mr. Holford) Okay. But to the extent they
7 concern tobacco, they're concerned with prevalence of
8 tobacco use; is that right?
9 A. Yes.
10 Q. Okay. And did you mention that your articles that
11 you just mentioned also involved trying to discern
12 demographic data and socioeconomic data associated
13 with the tobacco use?
14 A. Yes.
15 Q. Did you find that there is a direct correlation
16 between the lower the socioeconomic status the
17 greater use of tobacco?
18 A. That didn't always show up, no. What we found was
19 that substance use was related more to discretionary
20 income and that, at least for certain substances such
21 as marijuana, it was more likely to show up in middle
22 class neighborhoods where children had money and that
23 lower socioeconomic class individuals were not as
24 likely to use those substances.
25 I would have to go back and see what it said

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1 about tobacco. I just do not recall.
2 Q. Generally, tobacco is not as expensive as the illegal
3 drugs, right?
4 A. Yes, sir, that's true.
5 Q. And so it would not be as tied to the availability of
6 money as are the illegal drugs --
7 MR. SHEFFLER: Object to the form.
8 The doctor said --
9 Q. (By Mr. Holford) -- in your opinion; is that right?
10 MR. SHEFFLER: Mr. Holford, if I
11 interrupted your question, I'm sorry.
12 MR. HOLFORD: Go ahead. I just
13 finished.
14 MR. SHEFFLER: Okay. When I'm stating
15 an objection, I would appreciate it if you
16 didn't interrupt me, likewise.
17 I object to the form of the question.
18 The doctor has already testified he would
19 like to go back and review those studies on
20 tobacco and further questions on this
21 without giving him the opportunity to do
22 are improper.
23 MR. HOLFORD: You mean I interrupted
24 your objection to his last -- by starting
25 after his last answer, you mean, I

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1 suppose. I don't know.
2 Q. All right. Now, Dr. Hays, do you expect that the
3 data that you found in the articles that you
4 mentioned would show that tobacco use more so than
5 the illegal drugs would be prevalent according to
6 socioeconomic factors apart from the availability of
7 money?
8 MR. SHEFFLER: Object to the form. If
9 you understand that question, Doctor,
10 please answer it.
11 UNIDENTIFIED: Object to the form.
12 A. Yeah, I'm not sure I do.
13 Q. (By Mr. Holford) Well, then let me rephrase it.
14 A. All right.
15 Q. In other words, you said with regard to your studies
16 that what you found was that the prevalence of use of
17 drugs was more so in the classes of peoples that had
18 discretionary monies; is that right? Did I
19 understand that?
20 A. Yes, you did.
21 Q. Okay. And then, you agreed that tobacco, however,
22 did not cost even on the order of these illegal
23 drugs, which have to be bought on the black-market,
24 that have to be bought illegally; and I believe you
25 agreed with that, right?

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1 A. Yes, I did.
2 Q. Okay. So I say: Does it follow to you and do you
3 expect that your studies show that tobacco use is
4 more prevalent among lower socioeconomic classes and
5 is, in fact, not as prevalent among the classes with
6 the most discretionary money?
7 MR. SHEFFLER: I object to the form of
8 the question. The best evidence of what
9 the studies show is what the studies show
10 and, if the doctor can recall what they
11 show, fine, but I object to asking him to
12 predict or expect what they show.
13 Q. (By Mr. Holford) Okay.
14 A. I would have to go back and see whether or not that's
15 true. I just do not recall.
16 Q. Okay. That could be true?
17 A. Yeah. Lots of things could be true but --
18 Q. All right.
19 A. -- I don't know what these data show. They can be
20 reexamined.
21 Q. All right. So, in these studies that you mentioned,
22 you did not look at or try to explain why people
23 smoked; is that true?
24 A. That's true.
25 Q. Okay. And were these studies -- I think you

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1 mentioned school districts; and so, were they
2 primarily aimed at youth? At minors?
3 A. The major studies that I did were for the Houston
4 Independent School District. That's where we had our
5 largest sample of students. And we did other school
6 districts and other populations, but the bulk of the
7 work was done with student populations.
8 Q. Do your articles contain data on what percent of
9 different age classes of grade school, junior high,
10 high school students are smoking?
11 A. Yes. Past tense. It's 20 years ago.
12 Q. All right. Are any of the articles you mentioned
13 more recent than 20 years ago?
14 A. Well, we can look on the CV and see.
15 Q. Well -- okay. You remembered that one. I guess that
16 was your largest; is that right?
17 A. That's true.
18 Q. Okay.
19 A. Most of the drug studies I did, most of the substance
20 use studies I did, were done in the early 1970s.
21 Q. Dr. Hays, as far as you know, when did any tobacco
22 company first become aware of you?
23 MR. SHEFFLER: Object to the form of
24 the question.
25 MR. RILEY: Object to the form of the

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1 question.
2 A. I haven't the foggiest notion when they became aware
3 of me.
4 Q. (By Mr. Holford) Well, that's why I put it in terms
5 of when did it first come to your attention that the
6 tobacco company was interested in retaining you as an
7 expert?
8 MR. SHEFFLER: Object to the form of
9 the question because it assumes a fact not
10 in evidence.
11 A. About a year ago.
12 Q. (By Mr. Holford) Was that for this case?
13 A. Yes.
14 Q. So you have never been either a consulting expert or
15 a testifying expert in any tobacco case. I think we
16 covered that but...
17 MR. SHEFFLER: I think we did, and I
18 object as it being asked and answered.
19 Q. (By Mr. Holford) That's correct, isn't it?
20 A. That's correct, yes, sir.
21 Q. Okay. So who contacted you about a year ago?
22 A. I don't remember exactly who it was. I would have to
23 go back to the telephone records and see who I talked
24 to and so on.
25 Q. So it was a telephone call?

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1 A. I'm sure the initial contact was a telephone call.
2 Nobody gets in my office without phoning me first.
3 They can't get in the hospital.
4 Q. It wasn't a letter?
5 A. These guys have been over there. They know that the
6 total body searches are pretty interesting at the
7 hospital. They have very high security at the
8 hospital.
9 MR. SHEFFLER: Nobody wants to get
10 into the hospital.
11
12 (Talking at the same time.)
13
14 A. It's lucky we didn't have the deposition out there.
15 Q. (By Mr. Holford) All right. That was not a letter,
16 in other words --
17 A. No.
18 Q. -- but it was a --
19 A. Phone call.
20 Q. Okay. And what do you recall of that telephone call?
21 What was said in that?
22 A. I don't try to keep those things straight. Somebody
23 calls in, and they want to see me for whatever
24 reason. I make a decision whether or not it's
25 something I want to pursue, and then we make an

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1 appointment to get together. And I'm sure that's all
2 that was involved in that first phone call.
3 That's pure speculation on my part, though.
4 Q. That's what usually happens, in other words?
5 A. Yes.
6 Q. And do you know how they got your name?
7 A. I do not know.
8 Q. And at that time, Dr. Hays, let's say right before
9 that phone call, had you been aware of any tobacco
10 cases?
11 A. Other than what I read while I was going to law
12 school and what I read in the newspapers occasionally,
13 no.
14 Q. You read about a tobacco case in law school?
15 A. Yes. In torts.
16 Q. Do you remember which case it was?
17 A. No. It was Prosser; so, you can go look in Prosser
18 and find it. It was from Louisiana. I remember that
19 much about it.
20 Q. What year was that?
21 A. I was in law school from 1975 through 1980. I was a
22 slow reader.
23 Q. Did you go at night?
24 A. Yes.
25 Q. So, I mean, did whoever called you mention that they

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1 were calling about a tobacco case?
2 MR. SHEFFLER: Objection.
3 A. I do not recall.
4 Q. (By Mr. Holford) Did you have any idea what kind of
5 case it was that you were being called on?
6 MR. SHEFFLER: Objection.
7 A. I don't recall; so, you know, I'm not going to
8 speculate about that.
9 Q. (By Mr. Holford) Okay. When was there another -- was
10 there a meeting after that, or what was the next
11 contact?
12 A. The next would have been a meeting, I'm certain; but
13 again, I don't recall the date of that.
14 Q. Do you remember who was at the meeting?
15 A. No, I don't.
16 Q. Was it more than one person? Other than you, I mean?
17 A. I don't recall the first meeting, and I don't recall
18 who was there.
19 Q. You don't recall anything about the first meeting?
20 A. No, not the first meeting. I have to go back and
21 look at my records and see if they reflect who was
22 participating and so on.
23 Q. What was the next contact?
24 A. Well, in most of the contact I have had about this
25 case, it's been discussion at a meeting followed by

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1 telephone calls and then more meetings and so on.
2 Q. And that's been the case right up to this deposition?
3 A. Yes.
4 Q. Would you be able to say how many meetings that you
5 have had?
6 A. Not off the top of my head, no.
7 Q. Would it be closer to two or three or nine to ten?
8 A. I wouldn't speculate. I -- you know, we can look
9 back at the records and see.
10 Q. All right. When was the last -- before this
11 deposition, when was the last contact you had?
12 A. Yesterday afternoon.
13 Q. Was that a meeting?
14 A. Yes.
15 Q. Who was there?
16 A. Several people. Myself. Mr. Shefflen (sic).
17 Q. Mr. Sheffler?
18 A. Yes. Mr. Cruse. Mr. Allen. Mr. Riley.
19 THE WITNESS: I have forgotten your
20 name.
21 Q. (By Mr. Holford) Ms. Fee?
22 A. Yes. She was there for part of the afternoon. In
23 fact, everybody was sort of coming and going during
24 the meeting.
25 Q. Was that it that you can recall? I mean, was that

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1 all the people?
2 A. Yes.
3 Q. So we have the same cast here today except for myself
4 and the reporters; is that right?
5 A. Yes.
6 Q. All right. Did they tell you very much about what
7 would go on at this deposition?
8 A. You mean did they speculate about what would go on at
9 the deposition? I mean, they can't tell me what's
10 going to happen tomorrow.
11 Q. No.
12 A. That's pretty difficult to do.
13 Q. But did they discuss this deposition at all?
14 A. Yes.
15 Q. And, I mean, you have given a lot of depositions
16 before, right; so, what was said about this
17 deposition?
18 A. You mean this deposition as opposed to others or --
19 Q. Well, they may have put it that way; I don't know.
20 Just about this deposition.
21 A. We talked a lot about the issues involved in this
22 case, and that was the purpose of the meeting was to
23 prepare for the deposition.
24 Q. Did you have a -- well, does that cover the whole
25 meeting? That's what you did? You talked a lot

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1 about the issues in the case?
2 A. Yes.
3 Q. You didn't talk about anything else, I suppose?
4 A. No.
5 Q. Do you have an understanding of what the plaintiff's
6 allegations are that concern your area of expertise?
7 A. Yes.
8 Q. What do you see those as?
9 A. I think the principal issue that my expertise
10 addresses is the individual's ability to make choices
11 and make decisions, and I think that's why I became
12 first involved in this case.
13 Q. Have you seen much about the Cipillone case?
14 A. No.
15 Q. You don't know that went to the U.S. Supreme Court
16 and the Supreme Court rendered an opinion back in
17 June of '92 -- '93?
18 MR. SHEFFLER: Object to the form of
19 the question.
20 Q. (By Mr. Holford) One of those years.
21
22 (Talking at the same time.)
23
24 Q. (By Mr. Holford) And it was a big event in the
25 tobacco cases, I mean; but you didn't see that or

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1 hear about that?
2 MR. SHEFFLER: Objection to the
3 assumption of the question.
4 A. The style of the case rings no bells with me.
5 Q. (By Mr. Holford) All right. Well, it was the U.S.
6 Supreme Court case that decided, finally, what was
7 pre-empted and what was not pre-empted by the 1966
8 and '70 cigarette labeling act legislations. Does
9 that ring a bell?
10 MR. SHEFFLER: Are you -- objection.
11 Is that a question?
12 MR. HOLFORD: Yeah.
13 Q. The question is: With that preface, does that ring a
14 bell?
15 MR. SHEFFLER: Objection.
16 A. No, it does not.
17 Q. (By Mr. Holford) Okay. And -- okay. So right after
18 that decision was announced, I believe it was a
19 Philip Morris lawyer made a remark about smokers
20 making their own choices; and whatever happens, they
21 do it to themselves, that type thing.
22 MR. SHEFFLER: Object to the --
23 Q. (By Mr. Holford) Is that --
24 MR. SHEFFLER: I'm sorry; I
25 apologize. I thought you were done.

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1 MR. HOLFORD: No.
2 Q. Is that the type of defense that you understand
3 you're in the case for?
4 MR. SHEFFLER: Object to the form of
5 the question. Object to the assumption
6 contained in the question.
7 MR. CRUSE: And he also said he didn't
8 know anything about Cipillone.
9 MR. HOLFORD: My question didn't
10 involve Cipillone.
11 MR. CRUSE: You said the Philip
12 Morris lawyer.
13 MR. SHEFFLER: Is the question, did he
14 recall the Philip Morris lawyer talking
15 after the Cipillone decision? What's the
16 question?
17 MR. HOLFORD: The question is: Does
18 it look to him like he's in the case for
19 that type of defense.
20 MR. SHEFFLER: Object. To what type
21 of defense?
22 MR. HOLFORD: You're asking me?
23 MR. SHEFFLER: Object. That's not a
24 question. That's an improper question.
25 Object to the form.

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1 Q. (By Mr. Holford) All right. Do we have a question
2 pending that you understand?
3 A. No.
4 Q. Okay.
5 MR. SHEFFLER: That was the basis of
6 my objection.
7 Q. (By Mr. Holford) Is the defense that smokers make
8 their own choice to smoke and whatever happens is
9 their own responsibility, is that the defense that
10 you see yourself as in the case for.
11 MR. SHEFFLER: Object to the form of
12 the question.
13 MR. CRUSE: It also mischaracterizes
14 his other testimony earlier about the
15 issues he was in the case for, and I object
16 to it.
17 MR. SHEFFLER: And I object to the
18 characterization of Dr. Hays' testimony
19 with respect to issues in this case as a,
20 quote, defense, unquote.
21 MR. HOLFORD: I'll pass to your client
22 that you're not interested in getting paid
23 on any defense work in the case then,
24 okay?
25 MR. SHEFFLER: You can pass whatever

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1 you want to pass, but Dr. Hays is here to
2 give expert opinions with respect to the
3 issues in this case as friend of court.
4 Q. (By Mr. Holford) You want to adopt that answer? I
5 mean, would that be your answer?
6 MR. CRUSE: You may want to get back
7 to questions and answer.
8 MR. HOLFORD: Well, I give a question,
9 and then there is a lot of talk so --
10 MR. SHEFFLER: There is an objection.
11 Your question was objectionable, and that's
12 the basis for my comments. There's an
13 objection.
14 MR. HOLFORD: Mr. Sheffler, let me
15 make a point here then.
16 MR. SHEFFLER: You can do whatever --
17 MR. HOLFORD: An objection --
18 MR. SHEFFLER: -- you want but you
19 should use your time to ask the witness
20 questions.
21 MR. HOLFORD: Objections generally
22 don't take more than one or two words,
23 okay?
24 MR. SHEFFLER: What are you doing
25 now? Are you questioning me, or are you

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1 objecting?
2 MR. HOLFORD: No, I'm lecturing you.
3 MR. SHEFFLER: Well, that's not
4 proper; and I object to it.
5 MR. HOLFORD: Yeah. You know,
6 objection, misstates the evidence.
7 Objection, assuming a fact not in evidence.
8 Okay. All the colloquy that you then enter
9 into is not proper. That's why --
10 MR. SHEFFLER: Doug, would you call
11 what you're doing proper?
12
13 (Continual talking at same time.)
14
15 MR. SHEFFLER: And that's why I can't
16 get a question across to the witness on
17 this point.
18 MR. SHEFFLER: I submit to you, sir,
19 the reason you can't get a question across
20 to this witness is because you don't know
21 how to ask questions properly.
22 MR. HOLFORD: Yeah. Well, you get
23 personal in this jurisdiction, Mr.
24 Sheffler; and it's going to come back to
25 you.

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1 MR. CRUSE: Let's just try to get back
2 to questions and answers, but some of your
3 questions have not been questions. You
4 have been making statements and then
5 throwing in, "Does that ring a bell" or
6 "What do you think about that" after it;
7 and that's what the problem has been.
8 Let's just try and start over and see where
9 we go from there.
10 Q. (By Mr. Holford) Dr. Hays, do you see yourself in
11 this case to give testimony along the line of a
12 defense like smokers make their own choice to smoke
13 and they are responsible for anything that happens to
14 them?
15 MR. SHEFFLER: Object to the form.
16 A. I think that is part of what I will testify to if we
17 get to the point of my opinion being asked about it,
18 yes.
19 Q. (By Mr. Holford) Now, as you put your understanding
20 of the plaintiff's allegations in the case to which
21 you're being responsive as being an individual's
22 ability to make decisions, does your opinion on that
23 differ whether it's a smoker or a nonsmoker?
24 MR. CRUSE: I object to that as the
25 form as being just vague and ambiguous.

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1 A. Yeah. I'm not sure I understand the question.
2 Q. (By Mr. Holford) Does your opinion on that differ as
3 to whether the individual in question is, let's say,
4 a long-term smoker or a nonsmoker?
5 MR. SHEFFLER: Objection to the form.
6 MR. CRUSE: Object to the form and
7 opinion on that as being undefined and
8 ambiguous.
9 A. I really don't understand the question. I mean, I
10 just don't understand the question.
11 Q. (By Mr. Holford) Okay. In this case, you're going to
12 address an individual's ability to make decisions,
13 right?
14 A. Yes.
15 Q. Okay. In your opinion or opinions in that area, does
16 it make any difference to your opinion whether the
17 individual in question is a long-term smoker or is a
18 never smoker?
19 A. Well, again --
20 MR. SHEFFLER: Objection.
21 A. -- I don't understand what you mean by choices. With
22 regard to what? I mean, I'm not -- I just don't
23 understand the question.
24 Choice involves choosing, you know. Choice
25 involves going down one path versus another, taking

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 one stairwell or another, one door or another. And
2 you're saying: Is my opinion about making choices
3 for a smoker and a nonsmoker different? Different
4 about what?
5 Q. (By Mr. Holford) Well, when you give any opinions
6 that you give in this case concerning an individual's
7 ability to make decisions, what will that be in
8 regard to?
9 MR. SHEFFLER: Objection in regard to
10 the question as posed. I object to that as
11 ambiguous and object to the form.
12 MR. HOLFORD: Yeah, and that type of
13 talking, Mr. Sheffler, to try to hand an
14 answer to a perfectly capable witness, is
15 what's improper about your talking. Okay.
16 MR. SHEFFLER: Is that an objection to
17 my objection?
18 MR. HOLFORD: That's another lecture
19 to you.
20 MR. SHEFFLER: That's another lecture.
21 MR. HOLFORD: Yes, sir.
22 Q. What are you going to talk about in this case?
23 MR. SHEFFLER: Objection. Overly
24 broad and unanswerable.
25 Q. (By Mr. Holford) I mean with regard to that issue

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 that you said?
2 MR. SHEFFLER: Objection. Ambiguous
3 and unanswerable.
4 A. Yeah. I'm afraid I don't understand the question.
5 Q. (By Mr. Holford) Are you going to talk about an
6 individual's ability to make decisions?
7 A. Yes.
8 Q. With regard to what? Decisions with regard to what?
9 A. Whatever issues are presented to me, I'll talk about
10 that.
11 Q. Okay. And even though you're retained as a
12 testifying expert in this case, you don't know what
13 those issues are going to be concerning?
14 A. Well, this case concerns smoking, an individual's
15 choice to smoke or not smoke as part of that case.
16 Q. Well, then you are necessarily talking about just
17 about smokers.
18 MR. SHEFFLER: Objection.
19 MR. CRUSE: That's not what he said.
20 MR. SHEFFLER: That's not what he
21 said.
22 Q. (By Mr. Holford) Right?
23 MR. CRUSE: You're mischaracterizing
24 his testimony.
25 Q. (By Mr. Holford) Or do you also consider a long-term

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1 smoker compared to a never smoker?
2 MR. SHEFFLER: Objection. Objection
3 to the form of the question. Objection to
4 mischaracterization of the question.
5 Object to the question as being compiled.
6 Do you understand the question?
7 THE WITNESS: No, I really don't.
8 A. I don't understand the question.
9 Q. (By Mr. Holford) In your opinion, Dr. Hays, is there
10 a difference between an individual's ability to make
11 decisions regarding using sugar on their cereal or
12 not and an individual's ability to make decisions
13 about smoking or not --
14 MR. SHEFFLER: Objection.
15 Q. (By Mr. Holford) -- and where the first individual is
16 a never smoker?
17 MR. SHEFFLER: The individual who uses
18 sugar on his cereal?
19 MR. HOLFORD: Right.
20 MR. SHEFFLER: Objection to the form
21 of the question.
22 Q. (By Mr. Holford) Okay. Do you understand that?
23 A. I'm not sure. I mean, if -- if I can clarify it by
24 saying: Is the decision making process any different
25 from an individual who decides to salt his food

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1 versus choosing to smoke or not, are those decision
2 making processes different --
3 Q. Yes.
4 A. -- for a smoker versus a nonsmoker? Is that your
5 question?
6 MR. SHEFFLER: It's a whole lot better
7 question.
8 Q. (By Mr. Holford) Yes, sir.
9 A. No, I don't think the decision making processes are
10 significantly different when you're a smoker versus a
11 nonsmoker, whether you're choosing to do one thing.
12 Smokers are not that different in terms of their
13 decision making processes than anybody else than non-
14 smoker.
15 Q. Well, of course, it's your view that a smoker,
16 however long they have been smoking and however much
17 they have smoked, the matter of taking out the next
18 cigarette and smoking it or not is purely a matter of
19 free will, pure choice, right? Free will choice?
20 A. That's right. There is choice involved in doing
21 that.
22 Q. And that smoker can just as easily decide, in your
23 opinion, not to smoke that next cigarette as he can
24 decide the next morning not to put sugar on his
25 cereal, right?

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1 A. The decision making process is the same, yes.
2 Q. And the ability of the person to do either, in your
3 opinion, is the same, right?
4 A. The capacity of the individual to make those kind of
5 choices is there, yes.
6 Q. Well, not just there; it's about the same, in your
7 opinion, right?
8 A. That's right.
9 Q. All right. I understand your school's policy on
10 payment for deposition time. For time where you have
11 just met with the defense counsel, did you charge for
12 that?
13 A. I haven't yet; but I will, yes.
14 Q. Will you get that money?
15 A. No. That goes to the university.
16 Q. Okay. So everything you do in this case, your time
17 is charged for and paid over to the university?
18 A. That's correct.
19 Q. Trial as well?
20 A. Yes. The only thing faculty members at the
21 University of Texas get to keep is royalties on
22 books. And instead of writing a book, I'm here in a
23 deposition.
24 Q. Do you know if there are any faculty members at the
25 University of Texas that have involvement in

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1 litigations that disagree with your understanding on
2 that?
3 A. On what?
4 Q. On how they may charge and who can collect for what
5 type of involvement in a case?
6 A. I do know that over the past year the dean has sent
7 around three notices that's saying: All money you
8 get from expert witness' fees and depositions and
9 trial testimony is the university's money. So I
10 don't think there is any question in the dean's mind
11 or my mind about that and there may be some faculty
12 members that are doing it differently and, if you
13 know about that, I'd sure like to know it because
14 they are cheating me.
15 Q. Do you know about any?
16 A. No. If I did, I would tell the dean.
17 MR. SHEFFLER: Do you, Mr. Holford?
18 Q. (By Mr. Holford) Well, you just stated what the dean's
19 word out on that for the past year was; is that right?
20 A. That's right. Yes, sir.
21 Q. Okay.
22 A. And I know that every faculty member has been
23 reminded of that.
24 MR. HOLFORD: Okay. Mark that No. 2.
25

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1 (Hays Exhibit No. 2 was
2 marked for identification.)
3
4 Q. Now, Dr. Hays, I'm showing you what's been marked
5 Exhibit No. 2; and I'll ask if you have seen that
6 before?
7 A. It's a notice of deposition; and, yes, I did see this
8 yesterday afternoon.
9 Q. Was that the first time?
10 A. Yes.
11 Q. Did you look over the subpoena duces tecum starting
12 on the second page?
13 A. I did.
14 Q. Have you brought what you had in your possession,
15 custody, or control in response to that?
16 A. As much as I could get together in a short period of
17 time this morning, yes, sir.
18 Q. Well, let's see -- all right. Reading under the
19 subpoena duces tecum, Item No. 1, do you have any of
20 that?
21 A. I do not have a fee retainer or engagement agreement
22 with the defendants in this case.
23 Q. No written agreement, in other words?
24 A. No. It's been oral.
25 Q. And you have given us your most recent curriculum

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1 vitae, Item No. 2, which is Exhibit 1 here, right?
2 A. Yes.
3 Q. Now, do you have any of No. 3: Any and all works you
4 have published that concern smoking and nicotine
5 addiction and nicotine dependence?
6 A. I have not done any specific work on smoking and
7 nicotine addiction or nicotine dependence.
8 Q. Okay. So you have nothing under Item No. 3, right?
9 A. That's correct.
10 Q. All right. Item No. 4, we discussed articles listed
11 in your CV, Exhibit 1, that concern tobacco use. Do
12 you have any other -- are there any others?
13 A. Other than what's on the CV that I mentioned earlier?
14 Q. Yes, sir.
15 A. No.
16 Q. Okay. And did you have any of the articles themselves
17 of those to bring?
18 A. Yes. Not those specifically, but those that were
19 enumerated later.
20 Q. Oh, okay.
21 A. I have some of those.
22 Q. We'll get to those. Okay. No. 5, any items that you
23 contend support the opinions to which you intend to
24 testify in this case?
25 A. Yes.

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1 Q. Now, do you have anything to produce on that?
2 A. No, other than the depositions which I brought, and
3 that's all.
4 Q. Okay. Could I see those, please?
5 A. They are right there.
6 Q. Is it a big box?
7 A. Yeah. These are the depositions.
8 Q. Okay. Well, actually, it's better if you would tell
9 us which ones they are. I'll bring it over there, if
10 you like.
11 A. No, sir, that's all right.
12 Q. Okay.
13 A. Do you want me to just read the...
14 Q. The deponent, yes, sir.
15 A. All right. Transcripts I have reviewed are: Shirley
16 Gail Auld-Caskey. Rachel Hudson. Kathy V. Taylor.
17 Dale A. Faulkner, M.D. Vera K. Patty. Ellis Jensen.
18 Luther Allgood. Burton Hink, M.D. Deposition of
19 Bonnie I. Allgood, Volume II and exhibits to the
20 deposition of Bonnie Allgood, Numbers 1 through 14.
21 The deposition of Mr. Zamora -- and I will not
22 attempt to pronounce his first name. Deposition of
23 Marcus P. Allgood. John E. Crainer.
24 Q. Crainer.
25 A. Andrew E. Brown, Jr. Volume I of Bonnie Allgood's

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1 deposition. Paula Anne Purcell. The deposition of
2 Sam Allgood.
3 Q. Is that in the workmen's comp case?
4 A. The 1986 deposition in the workers' compensation case,
5 yes.
6 Deposition of Malcolm P. Allgood. Deposition of
7 Nora Lillian Allgood.
8 A copy of the 1988 Surgeon General's report on
9 the health consequences of smoking, nicotine
10 addiction. And a copy of "Smoking and Health", and I
11 do not know the date of this. And a copy of the
12 protective order in this case dated March 5, 1992.
13 Those are the materials that I have reviewed in
14 this case.
15 Q. Could I see that one you didn't know the date of, the
16 "Smoking and Health"?
17 Oh, that's the '64 report, I believe.
18 MR. HOLFORD: Any agreement on that?
19 Q. They are not going to agree. Maybe it's not --
20 MR. SHEFFLER: I don't know. I don't
21 have it. If you want to show it to me,
22 I'll --
23 MR. HOLFORD: Oh, I'm sorry.
24 MR. SHEFFLER: I can't tell from the
25 Xeroxed page. If you want to let me see

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1 it, I'll tell you.
2 MR. HOLFORD: Okay. I'm almost sure.
3 The report of the advisory committee,
4 yeah.
5 MR. SHEFFLER: Yeah, I think we can
6 agree that this is a copy of the 1964
7 advisory committee to the Surgeon General.
8 Q. (By Mr. Holford) When you say you reviewed those,
9 Dr. Hays, did you read every item that you mentioned?
10 A. All the depositions, I read. The protective order, I
11 read. And the Surgeon General's report and the other
12 report, I didn't read completely, no.
13 Q. Did you read the conclusions of each chapter?
14 A. Of what?
15 Q. Of those two Surgeon General's -- well, the '88
16 Surgeon General's report has that; and in the '88
17 Surgeon General's report, did you read the primary
18 conclusions of each chapter?
19 A. No, not necessarily.
20 Q. What did you read in that?
21 A. Well, I skimmed through it and found those parts that
22 I thought were interesting or relevant; and I read
23 them.
24 Q. Did you mark those in some way?
25 A. No.

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1 Q. Can you describe those parts? Were there that many
2 different parts?
3 A. In the 1988 report, the parts that were primarily of
4 interest to me were Chapter 4, "Tobacco Use As Drug
5 Dependence," and Chapter 5, "Tobacco Use Compared
6 With Other Drug Dependencies." And the -- again,
7 that wasn't all that I read in the 1988 report; but
8 that's what I remember that I was most interested in
9 when I looked at it.
10 Q. All right.
11 A. The -- I'm sorry. This is the 1964.
12 Q. The '64 report, yes, sir.
13 A. The parts that were most interesting to me in that
14 were "The Pharmacology and Toxicology of Nicotine" and
15 "The Psychosocial Aspects of Smoking."
16 Q. That was pharmacology and what?
17 MR. SHEFFLER: "The Psychosocial
18 Aspects of Smoking."
19 Q. (By Mr. Holford) No, I mean, but the --
20 A. "Pharmacology and Toxicology of Nicotine."
21 Q. Toxicology. Okay. If you recall, Dr. Hays, did you
22 agree with what you read in the 1964 Surgeon
23 General's report?
24 MR. SHEFFLER: Objection.
25 A. That's too broad for me to really answer.

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1 Q. (By Mr. Holford) Okay. You agreed with some, and you
2 didn't agree with some; is that right?
3 A. Yes.
4 Q. Okay. Same answer to the '88 Surgeon General's
5 report?
6 A. Yes.
7 Q. Now, you stated what you had there and what you just
8 listed as what you reviewed in the case.
9 Item No. 5 in the duces tecum in Exhibit 2 asks
10 for the items that you contend support the opinions
11 to which you intend to testify in this case.
12 MR. SHEFFLER: Objection. Objection
13 to Item No. 5 to the extent it goes beyond
14 what the doctor has produced.
15 MR. HOLFORD: I didn't -- did you hear
16 that? I didn't hear the last part.
17 MR. SHEFFLER: Objection to Item No.
18 5, if you're seeking any and all articles,
19 books, et cetera, that he contends supports
20 the opinions to which he is going to
21 testify in this case, I object to the
22 request to produce.
23 MR. HOLFORD: To the extent that has
24 any effect, Mr. Sheffler, I still want to
25 inquire of Dr. Hays if --

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1 Q. Can you describe what there is that supports the
2 opinions to which you intend to testify in this case?
3 And the first item, all of your learning and reading
4 in the past and all, I understand that. I'm looking
5 for specific items that you have reinterested
6 yourself in or have gathered or have received from
7 defendants specifically for this case.
8 MR. SHEFFLER: Objection to the form
9 of the question. It's compound and
10 ambiguous.
11 A. If I understand the question, all I have received is
12 right here.
13 Q. (By Mr. Holford) Well, that's true; but do you claim
14 that all of what you listed just now from the
15 depositions and the two Surgeon General's reports that
16 they in total support the opinions to which you
17 intend to testify in this case?
18 MR. SHEFFLER: Objection. Objection
19 to the form of the question; and now, let
20 me make a further objection, because you
21 seem to be coupling this question with the
22 prior question, where you said: I want you
23 to put aside all of your learning and all
24 of the things you have done in the past 40
25 or 50 years.

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1 MR. HOLFORD: Right.
2 MR. SHEFFLER: Are you purposely
3 leaving it out of this question?
4 MR. HOLFORD: No.
5 MR. SHEFFLER: Then the question is
6 ambiguous, and I object.
7 MR. CRUSE: Well, it mischaracterizes
8 his testimony.
9 MR. SHEFFLER: Restate your question,
10 if you could --
11 MR. HOLFORD: Yeah.
12 MR. SHEFFLER: -- Mr. Holford.
13 Q. (By Mr. Holford) I'm distinguishing, Dr. Hays, what
14 you may have reviewed -- what you have reviewed, I
15 mean, for this case and what -- in the language of
16 Exhibit No. 2, paragraph 5, what you contend supports
17 the opinions to which you intend to testify in this
18 case. What supports them?
19 MR. SHEFFLER: I'm going to object.
20 Are you excluding everything he has ever
21 read and studied?
22 Q. (By Mr. Holford) Starting with everything you have
23 ever read and studied.
24 MR. SHEFFLER: I object. The question
25 is overbroad.

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1 A. If I understand your question, do these materials
2 support the conclusions that I reach? I think so,
3 yes.
4 Q. (By Mr. Holford) Okay. And you are just saying the
5 total of all of the materials that you just now
6 listed under paragraph 5?
7 MR. SHEFFLER: Objection. That
8 question makes no sense. Is there a
9 question there?
10 MR. HOLFORD: Yes.
11 Q. You're meaning all of the depositions and the two
12 Surgeon General reports that you listed when I first
13 asked you about paragraph 5?
14 MR. SHEFFLER: What's the question?
15 Q. (By Mr. Holford) Is that correct?
16 MR. SHEFFLER: Wait a minute. Wait a
17 minute. Would you lead that last question
18 back, please.
19 MR. HOLFORD: And his last answer.
20 MR. SHEFFLER: He didn't give one. I
21 object.
22 Would you read last question back,
23 please?
24 MR. HOLFORD: And his last answer.
25 You'll be starting with his answer.

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1

2 (Discussion off the record.)

3

4 MR. SHEFFLER: Are you withdrawing the

5 question?

6 MR. HOLFORD: Yes.

7 MR. SHEFFLER: All right. Let's start

8 afresh.

9 Q. (By Mr. Holford) Dr. Hays, are you saying then that,

10 in response to Item No. 5 and Exhibit 2, that all of

11 the depositions and the two Surgeon General's reports

12 that you just got through naming and as what you had

13 reviewed in this case, that all of those items come

14 under Item No. 5 because they all support the

15 opinions to which you intend to testify in this case?

16 A. Yes.

17 Q. Okay. Is there anything else as specific items that

18 you have in your possession, custody, and control; or

19 is that all that you have --

20 MR. SHEFFLER: I object --

21 Q. (By Mr. Holford) -- that support the opinions to which

22 you intend to testify in this case?

23 MR. SHEFFLER: Excuse me, Mr. Holford,

24 I thought you were finished.

25 I object to the form of the question

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1 because of the words "specific items" as
2 being undefined and ambiguous.
3 Q. (By Mr. Holford) Well, tangible items as Item No. 5
4 says?
5 MR. SHEFFLER: I object to that as
6 being over broad.
7 A. No.
8 Q. (By Mr. Holford) There is nothing else that you have,
9 right?
10 A. That's right.
11 Q. Okay. Now, Item No. 6, did you identify --
12 A. Mr. Holford, just to make sure that I understand that
13 question, if you're going to limit me only to the
14 information in this banker's box down here, the
15 answer is no. You know, I --
16 Q. You have got your whole background --
17 MR. CRUSE: Let him finish.
18 MR. SHEFFLER: Yeah. Don't
19 interrupt.
20 A. You know, I do have a wealth of experience that is
21 not captured in this banker's box, thank goodness,
22 this banker's box full of documents; and I'm not
23 going to leave that out. So --
24 Q. (By Mr. Holford) So you'll add that in on No. 5?
25 MR. CRUSE: And you'll let him finish

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his answer.

Q. (By Mr. Holford) Right?

A. Well, I can't produce every article, book, or document that I have read that supports my opinion, because we're talking about 25 years of professional experience.

Q. Okay. We'll get to that, if we do; but all I'm saying is: You're going to add that in to what your response on No. 5 was as to what supports the opinions you intend to testify in this case?

MR. SHEFFLER: Objection to the form of the question.

Q. (By Mr. Holford) Is that right? You don't want to limit what supports your opinions to these depositions and two Surgeon General's reports, in other words?

A. That's true.

Q. Okay. And so you're going to add the rest of that in, that you just said --

MR. SHEFFLER: The rest of it being --

Q. (By Mr. Holford) -- your 25 years experience and --

MR. SHEFFLER: The rest of that being what the doctor's former answer was. Is that what you're asking him --

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1 MR. HOLFORD: Yeah.
2 MR. SHEFFLER: -- what his answer is?
3 Asked and answered. Objection.
4 Q. (By Mr. Holford) Is that correct?
5 A. Yes.
6 Q. Okay. Now, No. 6, did you find anything that negates
7 the opinions to which you intend to testify in this
8 case?
9 A. No.
10 Q. All right. No. 7, yeah, I asked for particular
11 publications. No. 7, 8, and 9, actually, I called
12 out particular articles; although, I did not limit to
13 those particular articles, the three.
14 Let's go one by one.
15 No. 7, I have the particular articles there. Do
16 you have those?
17 MR. SHEFFLER: All right. Let me just
18 interpose an objection on the record.
19 Because we got this document so
20 untimely that we were unable to prepare a
21 formal list of objections, I would like to
22 state on the record at this time that we
23 object to requesting Dr. Hays to produce
24 any articles that are publicly available
25 and cited on his curriculum vitae on two

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1 grounds.
2 First of all, we don't think that was
3 proper under the rules.
4 And secondly, it's been the practice
5 in this case that that has not been a
6 requirement of the witnesses; and they have
7 not done so.
8 We didn't have time to formally
9 capsulize that in a response because this
10 document was served so late, but we're
11 making that objection at this time.
12 Dr. Hays, out of his own goodness of
13 his heart, proceeded to gather what
14 materials he can in response to these items
15 but -- and to the extent that he has them,
16 we're willing to let you make copies of
17 them at this point.
18 MR. HOLFORD: This notice was served
19 on March 24th.
20 What -- what -- did you have one of my
21 witnesses that you didn't require them to
22 produce some articles because they were
23 publicly available?
24 MR. CRUSE: There were a whole lot
25 that you wouldn't allow. I remember one of

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1 the witnesses that said he couldn't produce
2 articles.
3 MR. HOLFORD: Who?
4 MR. CRUSE: I'll go back and get it; I
5 don't have it. I know --
6 MR. HOLFORD: Well, you mean, like
7 Pollay and --
8 MR. SHEFFLER: Did they produce one
9 article that was publicly available on his
10 CV?
11 MR. HOLFORD: Are you talking Pollay?
12 MR. SHEFFLER: Did he produce one
13 article that --
14 MR. HOLFORD: I don't know.
15 MR. SHEFFLER: -- was publicly
16 available on his CV?
17
18 (Continual talking at same time.)
19
20 MR. CRUSE: That is what has
21 happened. That's been the practice in the
22 case.
23 MR. HOLFORD: Well, all right. Now
24 -- okay.
25 Q. So I'm just asking, then, Dr. Hays, you seem to have

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1 some articles here. What have you got on No. 7? Are
2 they divided up by these numbers?
3 A. I don't know how they are divided at this point. My
4 secretary handed them to me after I asked her to
5 photocopy them; and so, we'll see what order they are
6 in.
7 Q. All right.
8 A. If you will read the titles from my CV or go by the
9 number and read me the title, then I'll give you what
10 I've got.
11 Q. Let's see. I may have them. Well, do you want the
12 title?
13 A. Yes, for A-2.
14 Q. For A-2: Heroin addiction and methadone treatment.
15 A. I do have a copy of that.
16 Q. Okay. Now, let me ask, Dr. Hays: These copies that
17 you're producing, are they now extra copies?
18 A. They're yours.
19 Q. For me. Okay.
20 MR. SHEFFLER: Well, they are for
21 the --
22 A. For the deposition.
23 Q. (By Mr. Holford) Yeah. Okay. All right. So we have
24 got A-2.
25 All right. A-3 is: Discrimination of the MMPI

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1 heroin addiction scale between heroin addicts and so
2 on.
3 A. Yes, I have a copy of that.
4 Q. Okay. Let's see. I think I'll put on here -- this
5 is A-2, and this is A 3.
6 Okay. Then B-23 is: Use of heroin addiction
7 scale to differentiate addicts -- there is a typo --
8 from rehabilitation clients. It says form.
9 A. Yes. Use of heroin addiction scale to differentiate
10 addicts from rehabilitation clients, I have a copy of
11 that.
12 Q. All right. And B-26: A descriptive study of
13 behavior during the transition from heroin addict to
14 methadone patient.
15 A. Yes, I have a copy of that.
16 Q. C-4 (sic): Methadone, the carrot at the end of the
17 stick.
18 A. I believe that's a book chapter; and that, I did not
19 pull that book and make a copy of it. That is
20 publicly available.
21 Q. All right.
22 A. It's available at the University of Texas Mental
23 Science Institute library in the book.
24 Q. Okay. And F-13 -- well, this is the methadone, the
25 carrot at the end of the stick, a paper presented at

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1 the Second International Symposium on drug addiction.
2 A. That would have been the presentation I made of that
3 paper before it was published; and the presentations,
4 I typically do not keep a copy of those after it's
5 published. So that's not available, as far as I
6 know.
7 Q. Okay. Now, do you know if the articles that I listed
8 here under Item No. 7 consist of all those articles
9 that fit that description; that is, concerns in any
10 way addiction to or dependence on any substance?
11 MR. SHEFFLER: Objection.
12 Q. (By Mr. Holford) Did you make that check, in other
13 words; or do you know?
14 A. Well, what I read you earlier, articles that related
15 to tobacco use, there are other articles that relate
16 to substance use and addiction to heroin, for
17 example. And I did not read those nor did I bring
18 copies of those, but they are on my curriculum vitae
19 and it will have the name, "addiction," or heroin or
20 some such title, some such word in the title. And
21 they are publicly available.
22 Q. So you think there are more articles in your CV that
23 concern addiction to or dependence on any substance
24 other than these ones I have just read out the titles
25 of?

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1 A. Yes.
2 Q. Okay. Well, I'll have to find them then.
3 A. Well, for example, No. A-1 is a two-year follow-up of
4 methadone maintenance patients; and those are heroin
5 addicts. And so that's an example where there was a
6 publication that related to addiction or dependence
7 or treatment, for example, that was not included
8 here. You didn't ask about treatment --
9 Q. Yeah.
10 A. -- but that deals with drug abuse, yeah.
11 Q. Okay.
12 A. And much of my early work in the 1970s was related to
13 drug use, treatment, so on.
14 Q. Okay. Well, then, under Item No. 8, I have just one
15 article, F-24. Again, I don't know where that is.
16 MR. SHEFFLER: Is it in the
17 presentation? Page 20?
18 Q. (By Mr. Holford) I believe it's this rehabilitation,
19 the key to success with drug abusers, a paper
20 presented at the 18th Annual National Rehabilitation
21 Conference. So you don't have that, in other words?
22 A. No. That rehabilitation paper presentation would
23 have resulted in at least part of this article on
24 rehabilitation that was in print. I think I gave you
25 a copy of that.

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1 Q. Okay. Now, then No. 9 is dealing with the
2 psychologist as an expert witness. You have written
3 quite a bit on that, it looks like.
4 MR. SHEFFLER: Objection to the form.
5 A. I probably published more articles on substance use
6 and abuse and treatment than I have on the expert
7 witness area.
8 Q. (By Mr. Holford) Okay. All right. B-41.
9 MR. SHEFFLER: Off the record.
10
11 (Discussion off the record.)
12
13 Q. (By Mr. Holford) The psychologist as an expert
14 witness in Texas, "Texas Psychologist," 1979.
15 A. Yes, I have a copy of that article for you.
16 Q. Okay. Thank you.
17 A. And B-44 is evidently a duplicate of that.
18 Q. Yes. Is that all you have? Do you have anymore?
19 A. No.
20 MR. SHEFFLER: You already asked him
21 for B-44.
22 MR. HOLFORD: No. I was going to look
23 at E-3.
24 A. Well, if you will read what E-3 is, I'll tell you
25 what it is; and where you can find it.

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1 Q. Okay. Oh, it looks like a book. No. 3: "The
2 Psychologist as an Expert Witness."
3 A. That's out of print.
4 Q. Is that a book?
5 A. Yes, it's a book; and it's out of print.
6 Q. All right. F-65. These are presentations?
7 A. Yes.
8 Q. F-65, F-84, and F-91 are all presentations; and you
9 don't keep those, right?
10 A. Yeah. Usually, the presentations will be published
11 at some point in some version. The titles of the
12 publications will be very similar to the title of the
13 presentation.
14 Q. All right. Okay. No. 10 -- oh, that was just an
15 update. If you added any papers in those three areas
16 of 7, 8, and 9, I was going to ask for those.
17 A. Well, you can look at the curriculum vitae that I
18 gave you today and compare it and decide whether the
19 articles that are published since the November 1992
20 vitae were put together. You can decide whether you
21 want those or not, and I'll be glad to supply them to
22 you if you think they are relevant.
23 Q. Okay. No. 11, yes, any notes or, you know,
24 recordings, that is, or any tangible items which
25 record your thoughts concerning the opinions to which

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1 you intend to testify in this case.
2 A. I do have those.
3 Q. Can I see those?
4 A. Yes (handing folder to Mr. Holford).
5 MR. ALLEN: Is that the last thing on
6 the subpoena?
7 MR. HOLFORD: No.
8 A. It's too bad, because I'm out of stuff.
9 Q. (By Mr. Holford) Yeah. Well, let me run on then; and
10 maybe we can take a break.
11 No. 12, have you provided any reports or
12 summaries in whatever form to defendants?
13 A. I have not.
14 Q. No. 13, provided any tangible items to defendants?
15 A. Other than bills, no.
16 Q. Okay. Do you have any copies of your bills; are they
17 in here?
18 A. I think they are in there, yes.
19 Q. Okay. Have you already produced any tangible items
20 you have received from defendants, these depositions
21 and Surgeon General reports?
22 A. Yes.
23 Q. Now, I did notice that your deposition copies that
24 you have did not include depositions of any experts.
25 Did I listen correctly?

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1 A. I produced all the documents I have examined. They
2 are right here. If there are others that they want
3 me to look at, they haven't given them to me yet.
4 Q. Right. But what I mean is that you didn't have any
5 expert depositions in there?
6 A. Well, there are depositions of two physicians; and I
7 don't know what their role was, whether they were
8 fact witnesses or experts. But what's here is what's
9 here; that's it.
10 Did I answer your question?
11 Q. Yes, sir. Do you recall having looked at any expert
12 depositions?
13 MR. SHEFFLER: Objection. Asked and
14 answered.
15 A. In this case?
16 Q. (By Mr. Holford) Yes.
17 A. All I have looked --
18 Q. Other than -- I mean -- all right. Let me take out a
19 consideration, Dr. Burton Hink and Dr. Dale Faulkner.
20 Okay. Aside from the depositions of those two
21 gentlemen, have you -- I'm going to back up. Those
22 were people who treated Sam Allgood, apparently.
23 Okay.
24 A. Yes.
25 Q. Now, so take them out of consideration. Have you

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1 seen any or discussed any depositions of any experts
2 in this case?
3 MR. SHEFFLER: Objection to the form
4 of the question.
5 A. No.
6 Q. (By Mr. Holford) Okay. All right. Specifically,
7 Dr. John Grabowski, have you heard anything of his
8 depositions or his opinions?
9 A. No. I understood his deposition was to be taken. I
10 assume it was, but I don't know anything else about
11 it.
12 Q. Do you know Dr. Grabowski?
13 A. Yes.
14 Q. Have you worked with him?
15 A. Yes. He works at the University of Texas Mental
16 Science Institute. He's in the department of
17 psychiatry.
18 Q. But, I mean, do you-all work together?
19 A. No. We have never worked together. He supported
20 some of my students in the past financially on grants
21 that he's gotten, but he and I don't work together.
22 Q. You work in different fields then?
23 MR. SHEFFLER: Objection.
24 A. We're both in the department of psychiatry.
25 Q. (By Mr. Holford) He is -- is it a director of the

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1 addictive substances or something like that?
2 A. I think it's called Substance Abuse Research Center,
3 yes.
4 Q. Oh, okay. And he's the head of that, right?
5 A. That's right.
6 Q. Do you do any work associated with that?
7 A. I supervise some of the people that work there
8 occasionally. We have, as I mentioned, students that
9 are supported by him on grants that he's gotten; and
10 I'll supervise those students. Other than that, no.
11 Q. Do you do any work with regard to that substance
12 abuse center with addictive substances?
13 A. Do I work with Dr. Grabowski on any research? No.
14 Q. All right.
15 A. Do I see any substance abuse patients under that
16 substance abuse research center? No.
17 Q. Do you see any substance abuse patients who are
18 addicted to the substances to which they abuse?
19 A. Yes.
20 Q. Would that include cocaine abusers?
21 A. Yes.
22 Q. Heroin abusers?
23 A. Yes.
24 Q. What other ones do you -- what other substances, the
25 abuse of which you treat, do you see addicted

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1 patients for?
2 MR. SHEFFLER: Objection to the form
3 of the question.
4 MR. HOLFORD: I'll rephrase it.
5 MR. SHEFFLER: Thank you.
6 Q. (By Mr. Holford) What other addictive substances are
7 involved in your treatments?
8 MR. SHEFFLER: Objection. Objection
9 to the form of the question and the
10 assumption that his treatment involves --
11 objection to the form of the question.
12 That's it.
13 Q. (By Mr. Holford) Other than cocaine and heroin, which
14 you have already named?
15 A. Alcohol is the other principal drug of abuse that we
16 see in the department of psychiatry, but we see
17 individuals who use and abuse all kinds of things.
18 Q. Glue, you mean, or...
19 A. Inhalants and -- sure, and amphetamines, barbiturates.
20 Q. Except for alcohol, are all of the patients you see
21 that are addicted to drugs that they abuse doing so
22 illegally?
23 MR. SHEFFLER: Objection.
24 A. No.
25 Q. (By Mr. Holford) I guess, like, glue sniffing

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1 would --
2 MR. SHEFFLER: Objection.
3 Q. (By Mr. Holford) -- not be illegal; is that right?
4 A. Oh, no, I think -- I think it's --
5 MR. SHEFFLER: Objection. I don't
6 know what --
7 MR. CRUSE: Prescription pills aren't
8 illegal.
9 MR. HOLFORD: Right. Yeah.
10 A. That's, of course, what I was thinking about. We see
11 a number of individuals who are abusing prescription
12 medication.
13 Q. Are they abusing the prescription medication because
14 they have become addicted to it?
15 A. Well, in some instances, that's a way of capturing
16 it.
17 Q. Now, No. 15, again, have you provided any items to
18 any expert in this case?
19 A. No.
20 Q. Okay. And any and all documents relating to
21 Samuel E. Allgood, No. 16, have you produced that
22 with these depositions?
23 A. I have.
24 Q. Okay. Now, at this point, Dr. Hays, have you seen
25 everything that you consider necessary to support the

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1 opinions that you expect to state at the trial of
2 this case?
3 A. Yes. I'm content with what I've got.
4 Q. Yes, sir.
5 MR. HOLFORD: Okay. Well, if we want
6 to break...
7 MR. CRUSE: Okay. That's fine.
8
9 (Short Recess.)
10
11 Q. (By Mr. Holford) Okay. Dr. Hays, I forgot to ask
12 you -- our break reminded me about military service.
13 Did you have any or...
14 A. I was in high school R.O.T.C. for two years, and
15 that's as close as I came to military service. I'm
16 still 1-A as far as the draft is concerned. I still
17 have my draft card.
18 Q. There is no draft in effect but...
19 A. Well, I know that; but I still have my draft card.
20 Q. I see. Okay.
21 A. The answer to your question is no.
22 Q. All right. Well, when you came up for active duty
23 time within or around schooling or whatever, you got
24 the lottery, I imagine?
25 A. I haven't the foggiest notion what I got. All I know

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1 is I'm still 1-A.
2 Q. Okay. All right. Now, you handed me a folder here
3 in response to Item No. 11; and also, you have some
4 bills in here in response to No. 13, items in the
5 duces tecum of Exhibit 2. So on these --
6 MR. SHEFFLER: Did you mark those?
7 MR. HOLFORD: No.
8 Q. You have bills here dated March 2nd, 1993; June 1st,
9 1993; and January 25th, 1994; is that right?
10 A. Yes.
11 Q. Are those three all the ones you have to date?
12 A. I don't know. That's just whatever Debbie put in the
13 file. Debbie Garcia is my secretary, and she files
14 bills that I give her. And, usually, they are not
15 printed out; and they don't go in the file. They are
16 kept on electronic disk.
17 Q. And, of course, you have many other cases than this
18 one, I suppose, that you're billing in, correct?
19 MR. SHEFFLER: Objection. Objection
20 to the form of the question.
21 A. Yes. There are a number of cases that we bill for,
22 not just legal cases but cases that I see at the
23 hospital. So I'm sure --
24 Q. (By Mr. Holford) All right. Okay. And as far as
25 Ms. Garcia is concerned, these bills are no different

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1 than the bills where you're treating a patient, I
2 suppose?
3 A. Well, they are a little different because she types
4 these out; and the other bills are handled through
5 MSRDP, the Medical School Research Development
6 Plan. And we submit a billing invoice to them which
7 is different than this.
8 Q. Okay.
9 A. But since this doesn't involve a patient, there is no
10 mechanism set up through MSRDP to do that billing.
11 Q. But is your billing in this case any different than
12 your billing in any other piece of litigation that
13 you're involved in?
14 A. No.
15 Q. Okay. Well, do these three bills meet with your
16 present memory as far as what you billed them in this
17 case?
18 MR. ALLEN: Asked and answered.
19 A. I don't know. I mean, I would have to go back and
20 check against Ms. Garcia's billing file.
21 Q. (By Mr. Holford) Okay. And all of these bills
22 say: Please make your check payable to UT Department
23 of Psychiatry and Behavioral Sciences, correct?
24 A. Yes.
25 Q. And that's what was done?

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A. I don't know that I have ever seen any checks in this case; so, I assume so.

Q. Okay. Now, this March 2nd, 1993, statement, the first item on it is a January 13th meeting with Sam Cruse and D. Wallace, David Wallace, one and a half hours. Is that, to your recall, the first meeting that you had in this?

A. Quite possibly, yes.

Q. Do you think it is?

MR. SHEFFLER: Objection. Asked and answered.

A. As far as I know, it is.

Q. (By Mr. Holford) Okay. Now, the first bill totals $1125; is that correct?

A. Yes, sir.

Q. That's the March 2nd, 1993, statement, right?

A. Yes.

Q. And it looks like -- at the end of February of '93, did your billing change from 150 to 130?

A. (Examining) Looks that way.

Q. But that's conference time, that is, as opposed to what you're doing here, which is giving a deposition, right?

A. Well, the university's rate is $130 an hour; and it all should have been billed at $130 an hour.

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1 Q. Oh, I'm sorry; that is what you quoted me today,
2 isn't it?
3 A. That's right.
4 Q. Okay. So the second bill, June 1, 1993, the total is
5 $1300, correct?
6 A. Yes.
7 Q. And the third one, dated January 25, 1994, totals
8 $325, right?
9 A. Yes.
10 Q. Then there are also in this folder -- well, there is
11 the notice of this deposition, which has some -- are
12 these your markings on it?
13 A. Yes. This morning, when I was trying to comply with
14 your request for documents, I was making notes on
15 there when I could find the document and so on.
16 Q. Okay. And then there is some correspondence with
17 Chadbourne & Parke about the statement of your
18 opinions in answers to interrogatories, right?
19 A. Yes.
20 Q. And they would send you a typed-up form and ask you
21 to review and approve it, right?
22 A. Yes.
23 Q. And then, there is a pile of -- this is your writing,
24 correct?
25 A. Yes.

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1 Q. Okay. It's just different pens, right? Are these
2 all in your writing?
3 A. Well, let me see the stack.
4
5 (Hays Exhibit No. 3 was
6 marked for identification.)
7
8 A. Yes. All those pieces of paper appear to be in my
9 handwriting.
10 Q. And they all appear to be your notes on your reading
11 of the depositions that you listed; is that right?
12 A. Yes.
13 MR. HOLFORD: Okay. Well, I will mark
14 these as Hays Exhibit 2-A --
15 MR. SHEFFLER: Well, objection. Let's
16 go off the record for a second.
17
18 (Discussion off the record.)
19
20 MR. HOLFORD: Okay. Back on.
21 Q. There is one torn-off sheet here. It says, near the
22 top, Malcolm. Is that a note on Malcolm Allgood's
23 deposition?
24 A. I don't know. Let me see the sheets.
25 Q. I didn't see a torn-off one, but I might not have

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1 seen it.
2 A. (Examining document) I don't see my notes in here
3 from Malcolm Allgood.
4 Q. I'll show you Malcolm Allgood's page 60, and see if
5 you can correlate that to that note; see if that's
6 what it is.
7 A. No, it doesn't appear to correspond to that.
8 Q. So that Malcolm might be what's left over from the
9 last paragraph where it was torn off; would that make
10 sense?
11 MR. SHEFFLER: Objection.
12 A. I don't know. I can go back and look at the
13 depositions and figure out which page 60 this refers
14 to.
15 Q. (By Mr. Holford) I understand that, but it could also
16 be that Malcolm is the remainder of a previous
17 paragraph from where it was torn off.
18 MR. SHEFFLER: Objection.
19 A. I have no idea.
20 Q. (By Mr. Holford) Okay. Oh, well, it's obvious. The
21 note reads: She bought a package of cigarettes after
22 her husband died, smoked them; and they hurt her
23 throat.
24 The only husband dying we have in the case is
25 Sam and the wife, Bonnie, right?

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1 MR. ALLEN: Do you want me to copy
2 those while you're messing around?
3 MR. HOLFORD: Yeah.
4 A. Well, we can look at her deposition and see if it's
5 in there. There are two volumes.
6 MR. HOLFORD: Okay. Why don't you
7 take these, and then we'll give you this
8 sheet in a minute.
9 MR. ALLEN: I'll just wait and do it
10 all.
11 MR. HOLFORD: Okay.
12 A. That note appears to be from page 60 of Volume I of
13 the deposition of Bonnie Allgood.
14 Q. Okay. You have some notes here from that deposition,
15 right?
16 A. Yes.
17 Q. And they go -- the first page goes through page 60,
18 right?
19 A. Yes.
20 Q. So what do you make of that then, with this torn-off
21 piece?
22 A. Well, I don't --
23 MR. SHEFFLER: Objection.
24 A. Is this Volume I or Volume II?
25 Q. (By Mr. Holford) Well, it appears to be Volume I

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1 because Volume II is right here.
2 A. I thought it said Volume II over here.
3 Q. So you don't put anything together here? You're not
4 sure where this torn-off piece came from?
5 A. It came from my file.
6 Q. But, I mean, from what it was torn off, you don't, at
7 this point, know?
8 A. At this point, I do not know.
9 Q. Okay.
10 A. When I'm reading depositions, I usually have a ruled
11 piece of paper in front of me and just write down as
12 I go. But I don't always sit at my desk and work on
13 depositions. I'm sometimes interrupted. Sometimes I
14 go places, and I'll take a deposition with me and
15 read it on the run.
16 Q. Okay. All right. Now I have had four pages marked
17 as Exhibit 3. Do you recognize that? I put two
18 things together for that.
19 MR. SHEFFLER: You want to take a
20 break?
21 THE WITNESS: Yeah, if I could return
22 the page.
23
24 (Short Recess.)
25

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1 Q. Will you see if you recognize those. I believe they
2 were -- I'll tell you what I got them from. I was
3 given the top two pages, I believe, initially, as
4 opinions; and then the next two pages came recently,
5 very recently.
6 But do you recognize them, sir?
7 A. Not in this format, no.
8 Q. Let's see. I think I can match them with what's in
9 your folder.
10 A. All right.
11 Q. Actually, the last two pages are what was faxed to
12 you, it looks like, on March 21st, 1994 -- no, I'm
13 sorry; I'm backwards.
14 The first two pages are what were faxed to you
15 -- wait a minute. I might be backwards.
16 MR. SHEFFLER: We'll stipulate for the
17 record you are.
18 Q. (By Mr. Holford) Well, these are what I have,
19 Dr. Hays. It does look like the form might be a
20 little different except that the last two pages which
21 were sent, which I got recently, you had in your
22 file; is that right?
23 MR. SHEFFLER: You want to let him
24 see?
25 MR. HOLFORD: Yeah, I am.

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1 A. Yes. The last two pages of the document that you
2 have given me, labeled Hays Exhibit No. 3, corresponds
3 to information that was given to me.
4 MR. SHEFFLER: For the record, let me
5 point out that there is some margin on
6 page 3 that appears to be faintly present on
7 page 3 of Exhibit 3.
8 MR. HOLFORD: Yeah. I wrote on it and
9 erased it; but my copier is very sensitive,
10 it looks like.
11 MR. SHEFFLER: Is that Kinko's?
12 MR. HOLFORD: No, I meant my copier.
13 Do you have a -- could you make another
14 Exhibit 3, and let's just stick it over
15 this writing here.
16 MR. CRUSE: What does that writing
17 say?
18 MR. HOLFORD: I can't read it, Sam.
19 MR. RILEY: Would you tell us, if you
20 could?
21 MR. HOLFORD: That's not pending.
22 MR. SHEFFLER: Let me see the exhibit.
23 MR. HOLFORD: No, I don't want -- I
24 need to --
25 MR. SHEFFLER: We already read it.

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1 That's okay.
2
3 (Discussion off the record.)
4
5 MR. SHEFFLER: Seriously, I want to
6 know for the record, which is Exhibit 3?
7 MR. HOLFORD: It's all Exhibit 3.
8 MR. SHEFFLER: Let me make a
9 suggestion. Why don't you make 3-A and
10 3-B because now you have two different
11 Exhibit 3s.
12 MR. HOLFORD: Well, that's an
13 excellent suggestion, Mr. Sheffler, because
14 there are two different parts of it. Yeah,
15 just change that to 3-A.
16
17 (Hays Exhibit 3-A was
18 marked for identification.)
19
20 Q. Now, so these now having been separately marked,
21 Dr. Hays, you do recognize the two pages of Exhibit
22 3-A; is that right?
23 A. Yes.
24 Q. Okay.
25 A. Yes.

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1 Q. And as to the two pages of Exhibit 3, could you
2 either look in your file or just read it and
3 ascertain that that was an earlier set that you
4 approved, if you did?
5 A. What you have shown me as Hays Exhibit No. 3 now does
6 not correspond with response to Interrogatory No. 2,
7 if that's what you wanted me to do is compare these
8 two.
9 Q. Is that right?
10 A. Well, I can't find it if they correspond.
11 Q. Okay. Now, you're referring to response to
12 Interrogatory No. 2 as the last two pages of a fax
13 that was sent to you from Chadbourne & Parke; is that
14 right?
15 A. Yes.
16 MR. HOLFORD: Okay. Now, I want to
17 mark this fax. Do you want to copy it, or
18 do you care if I just mark it?
19 MR. SHEFFLER: What fax do you want to
20 mark? Let me see.
21 MR. HOLFORD: (Complies.)
22 A. Basically, I don't want to take anything out of my
23 file that's original, including original faxes; so, I
24 prefer that copies be made.
25 Q. (By Mr. Holford) That's fine.

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1 MR. CRUSE: We'll copy it.
2 Q. (By Mr. Holford) Yeah, they'll copy it.
3 MR. HOLFORD: Okay. And that will be
4 Exhibit 4.
5
6 (Hays Exhibit No. 4 subsequently
7 marked for identification.)
8
9 Q. Does Exhibit 3-A, Dr. Hays, state opinions which you
10 intend to state at the trial of this case?
11 A. Yes.
12 Q. Now, I see another fax here dated June 29, 1993.
13 Would you look at that fax and compare it to
14 Exhibit 3?
15 A. Yes, I compared them.
16 Q. Are they the same?
17 A. Yes.
18 Q. So does Exhibit 3 also contain opinions to which you
19 intend to testify at the trial of this case?
20 A. Yes.
21 Q. Do Exhibits 3 and 3-A contain all of the opinions
22 that you presently know to which you intend to
23 testify in this case?
24 A. Well, that's an umbrella statement of my opinions in
25 3 and 3-A. There may be specific opinions or even

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1 more general opinions that are not contained in
2 them. All of the opinions that I've got cannot be
3 contained on four pages.
4 Q. Well, I'm limiting the question to what you are
5 presently aware of; and then let me explain. If two
6 months from now, you give Chadbourne & Parke another
7 couple of pages of opinions, I will get them; and we
8 may have another deposition.
9 A. (Nodding.)
10 Q. Okay. But as far as right now, do Exhibits 3 and 3-A
11 state all of the opinions to which you intend to
12 testify in this case?
13 MR. SHEFFLER: Objection. That
14 question -- that exact question was just
15 asked and just answered. I object to the
16 repetitive nature of the question.
17 A. Yeah, I think I've answered it.
18 Q. (By Mr. Holford) Well, what opinions, other than what
19 is stated in Exhibit 3 and 3-A, do you intend to
20 testify to in this case?
21 A. It depends on the questions that are asked of me.
22 Q. Well, you have formed the opinions stated in Exhibits
23 No. 3 and 3-A based on questions that the defendant's
24 counsel have chosen to ask you --
25 A. Yes.

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1 Q. -- right?
2 A. (Nodding.)
3 Q. Okay. And there are no other questions pending to
4 you right now, right?
5 A. Other than the question you just asked.
6 MR. CRUSE: Other than the one you
7 just asked.
8 Q. (By Mr. Holford) Other than the one I just asked?
9 A. That's right.
10 Q. Okay. And there is going to be one more.
11 MR. SHEFFLER: Promise.
12 MR. HOLFORD: Yes.
13 Q. Through this question, Dr. Hays, are you aware of any
14 other opinions about this case to which you intend to
15 testify at the trial of this case other than those
16 opinions stated in Exhibits 3 and 3-A?
17 MR. SHEFFLER: Objection. Asked and
18 answered two times. This is the third.
19 A. I think I've answered the question. And, you know,
20 what's contained in 3 and 3-A are global statements
21 about what I'm going to be testifying about; and if
22 asked specific questions, then I'll answer those.
23 Q. (By Mr. Holford) You mean if asked specific questions
24 either later in this deposition or at the trial of
25 the case, you mean?

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1 A. Yes.
2 Q. Okay. Based on all the questions you have been asked
3 up to now and on any thinking about this case you
4 have done up to now, are the opinions stated in
5 Exhibits No. 3 and 3-A all of the opinions that you
6 presently expect to testify to at the trial of this
7 case?
8 MR. SHEFFLER: Objection. Asked and
9 answered.
10 A. What's contained in Exhibits 3 and 3-A are global
11 statements about the testimony that I'm going to be
12 offering; and I, if asked specific questions, will
13 give more specific opinions.
14 Q. (By Mr. Holford) This paper titled Fourth
15 Supplemental Response of Defendant The American
16 Tobacco Company to Plaintiffs' First Set of
17 Interrogatories, No. 2, Respecting Expert Witnesses
18 that's in your file, do you see that interrogatory at
19 the bottom of the first page?
20 A. Yes.
21 Q. Okay. Are the opinions stated in Exhibit 3 and 3-A
22 all of the opinions that you now have to offer in
23 response to the question in that interrogatory?
24 MR. SHEFFLER: Objection. This is
25 bordering on harassment. This is the fifth

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1 time you have asked this question.
2 MR. HOLFORD: And you-all are going to
3 get a motion to the Court for not
4 disclosing to me a complete answer to that
5 interrogatory before this deposition.
6 MR. SHEFFLER: Make your motion.
7 MR. HOLFORD: I'm laying the ground
8 for it right now.
9 MR. SHEFFLER: Well, you're not doing
10 a very good job of it if you're going to
11 ask the same question five times in a row.
12 I object to the form of the question as
13 being asked and answered four previous
14 times and asked a fifth.
15 A. I can't answer the question any way other than what
16 I've already done.
17 Q. (By Mr. Holford) Do you have different opinions than
18 what are stated in Exhibits 3 and 3-A.
19 MR. SHEFFLER: Objection. It's
20 mischaracterizing the testimony given four
21 previous times.
22 MR. HOLFORD: Okay. I'll rephrase
23 it.
24 Q. Do you presently expect to state at trial any
25 opinions different from those stated in Exhibits 3

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1 and 3-A here --
2 MR. SHEFFLER: Objection asked and
3 answered.
4 Q. (By Mr. Holford) -- about this case?
5 MR. SHEFFLER: Objection. Asked and
6 answered.
7 A. I can't give you any other answer other than the
8 opinions that I have got are globally stated here.
9 If you will give me specific questions, then we can
10 amplify on these statements.
11 Q. (By Mr. Holford) Based on the review that you have
12 done to date on the materials that defendants have
13 provided you and all the consideration you have given
14 to the case because of any questions posed to you, up
15 till now, do Exhibits 3 and 3-A state all of the
16 opinions you have about this case?
17 MR. SHEFFLER: Is that the end of the
18 question?
19 MR. HOLFORD: Right.
20 MR. SHEFFLER: I object that this
21 question has been asked six times and
22 answered five times. And I object as
23 repetitive. And I object as bordering on
24 harassment. And I object to the form of
25 the question.

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1 A. All the information that I have used to gather -- to
2 reach my opinions, all the background information
3 that I have got, are globally stated here; and
4 specific amplification of those can only come by
5 asking specific questions.
6 Q. (By Mr. Holford) When you said "here," you indicated
7 Exhibits 3 and 3-A?
8 A. That's correct, yes.
9 Q. Okay. So until such further specific questions which
10 may be asked of you are asked, the opinions stated in
11 Exhibits 3 and 3-A are as far as you have seen fit to
12 go in this case; is that right?
13 MR. SHEFFLER: Objection. Objection.
14 The question is ambiguous. Object to the
15 form.
16 A. Yeah. I'm not sure I understand the question. I
17 mean --
18 Q. (By Mr. Holford) Actually, I varied my language; so,
19 let me try again.
20 A. Okay.
21 Q. Okay. Until you are asked such specific questions in
22 the future which you may be asked, do Exhibits 3 and
23 3-A state all of the opinions that you have presently
24 formed about this case to which you do intend to
25 testify if you testify in this case?

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1 MR. SHEFFLER: Objection. Asked and
2 answered.
3 Q. (By Mr. Holford) Is that true? Now, I'm not asking
4 you, sir, if those are all the opinions to which you
5 intend to testify, because that may include further
6 questions that you are asked. I'm only asking you,
7 first of all: Do exhibits 3 and 3-A contain all of
8 the opinions that you formed in this case up to date;
9 and do you intend to testify to those opinions at
10 trial?
11 MR. SHEFFLER: Object -- objection. I
12 have to, you know, pose an objection. I'm
13 sorry, Doctor.
14 This question has been asked
15 repetitively in various shading form, but
16 the same question is being asked and I
17 don't want the record to reflect that there
18 hasn't been a prior answer to this question
19 on at least four to five separate
20 occasions.
21 A. I've already told you that I cannot -- or all of my
22 opinions will not fit on four pages. These four
23 pages in Exhibits 3 and 3-A are global statements
24 about the opinions that I have got in this case.
25 Q. (By Mr. Holford) Okay. So what you're saying then,

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1 Dr. Hays, is that, regardless of what questions you
2 might be asked in the future, as your mind sits right
3 now, you do have other opinions about this case than
4 are stated in Exhibits 3 and 3-A; is that right?
5 A. Exhibits 3 and 3-A contain global statements about
6 the opinions that I have got in this case. With
7 regard to specific issues, with regard to specific
8 questions about this case, I'll be able to refine
9 those opinions; but I can't do that without a
10 question.
11 Q. Well, sir, you can answer what questions are put to
12 you in the future; but right now, I want to know what
13 your opinions are in this case.
14 MR. SHEFFLER: Objection. Ask him a
15 question.
16 Q. (By Mr. Holford) I've been tendered by the defendants
17 Exhibits 3 and 3-A as your opinions in this case.
18 Are they, or are they not?
19 MR. SHEFFLER: Objection to the form
20 of the question. I object on two grounds.
21 First of all, the documents you were
22 tendered were in response to an
23 interrogatory that was governed by the
24 rules, 26(b)(4), and was a response
25 consistent and in compliance with that

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1 Rule.
2 I further object because those
3 responses, as you know, Mr. Holford, were
4 prepared by attorneys for the defendant in
5 this case and tendered to you as such.
6 MR. HOLFORD: Well, that's why I asked
7 Dr. Hays if they were shown to him and he
8 reviewed them and approved them.
9 MR. SHEFFLER: And you asked that, and
10 that was answered.
11 MR. HOLFORD: Right. Okay.
12 MR. SHEFFLER: Let's move on.
13 Q. (By Mr. Holford) Now, what Mr. Sheffler just
14 explained, Dr. Hays, is that this Interrogatory No. 2,
15 a copy of which you have in your file -- right? --
16 A. Yes.
17 Q. -- as to opinions says that the answers to this
18 interrogatory state: The substance of the facts and
19 opinions to which the expert is expected to testify
20 at the time the answers are signed.
21 Okay. They are to be supplemented later if that
22 changes.
23 Okay. So what I'm entitled to find out right
24 now are the substance of the opinions to which you
25 expect to testify in this case.

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1 MR. SHEFFLER: And you have asked that
2 question six times.
3 Q. (By Mr. Holford) Now, are Exhibits 3 and 3-A all of
4 those opinions --
5 MR. SHEFFLER: That's the seventh time
6 that question has been asked and has been
7 answered six times.
8 Q. (By Mr. Holford) -- or not; and if they are not, just
9 tell me so.
10 A. I think I have answered the question for you.
11 Q. I think your answer is that 3 and 3-A are not all of
12 the opinions to which you expect to testify in this
13 case.
14 MR. SHEFFLER: Is that a question?
15 Q. (By Mr. Holford) Is that right?
16 MR. SHEFFLER: Does he have to answer
17 to what you think? I --
18 Q. (By Mr. Holford) Is that right?
19 MR. SHEFFLER: -- object. I object.
20 MR. HOLFORD: Well, that's fine.
21 MR. SHEFFLER: There is no basis or
22 foundation as to what he has any knowledge
23 about what you think.
24 Q. (By Mr. Holford) Is that statement correct?
25 A. I don't think it is. If you will restate the

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1 question, I'll try to focus on it.
2 Q. All right. Are you saying that Exhibits -- that the
3 opinions stated in Exhibits 3 and 3-A are not all of
4 the opinions to which you intend to -- you expect to
5 testify in this case?
6 MR. SHEFFLER: That's a variant of the
7 same question that was asked seven times
8 and answered seven times before.
9 A. There will be specific questions put that will
10 amplify what is contained in Exhibits 3 and 3-A, and
11 I can't tell you what those questions are going to
12 be.
13 Q. (By Mr. Holford) Well, Dr. Hays, did I read this
14 Interrogatory No. 2 correctly as it relates to
15 interrogatories?
16 A. I didn't follow while you were reading it, but I will
17 trust you that you read it accurately.
18 Q. Well, look at it now, though, and understand that all
19 I'm trying to do here is verify or find out
20 differently that that interrogatory was correctly
21 answered by the defendants as regards you --
22 MR. SHEFFLER: Is there question?
23 Q. (By Mr. Holford) -- that what I was given was
24 Exhibits 3 and 3-A.
25 MR. SHEFFLER: Is there a question?

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1 Q. (By Mr. Holford) Do you understand that?
2 MR. SHEFFLER: Do you understand? I
3 object to that question.
4 Q. (By Mr. Holford) I'm serious. I mean, do you under-
5 stand what I just said?
6 A. Well, if you're saying, did Chadbourne & Parke
7 respond to Interrogatory No. 2, yes, they did; and
8 that's in 3 and 3-A.
9 Q. Right.
10 A. And did I see that and approve it? Yes, I did.
11 Q. All right. So you are now seeing Exhibits 3 and 3-A
12 again, right?
13 A. Yes.
14 Q. Are Exhibits 3 and 3-A a full and complete response
15 to Interrogatory No. 2 that I just read?
16 MR. SHEFFLER: Objection. That's the
17 eighth time the question has been asked;
18 and seven times, it has been answered
19 previously.
20 A. The opinions that I have in this case are globally
21 contained in Exhibits 3 and 3-A.
22 Q. (By Mr. Holford) All of the opinions you presently
23 have are globally contained in Exhibits 3 and 3-A; is
24 that right?
25 MR. SHEFFLER: Objection. Asked nine

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1 times and answered eight times previously.
2 Object.
3 A. I do not know of any specific opinion that I might
4 have at this point that contradicts any element in 3
5 and 3-A, the two exhibits that you have shown me.
6 Q. (By Mr. Holford) All right. I think, to make that
7 question and answer complete, Dr. Hays, I need to
8 read, and you along with me, this Interrogatory
9 No. 2.
10 It says: "Identify ... each person whom The
11 American Tobacco Company expects to call as an expert
12 witness at trial and, for each such expert, state the
13 subject matter on which the expert is expected to
14 testify, the substance of the facts and opinions to
15 which the expert is expected to testify, and a
16 summary of the grounds for such opinions."
17 Did I read that correctly?
18 A. Yes.
19 Q. All right. Now, on Exhibit 3, the first page, do you
20 see at the bottom there where it says, quote:
21 "...the effect of prolonged use of intoxicating
22 drugs and alcohol, which tends to impair human
23 judgment and decision-making abilities," end quote.
24 Do you see that?
25 A. Yes.

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1 Q. Okay. What drugs did you mean to include in
2 intoxicating drugs there?
3 MR. SHEFFLER: Objection. Again, as
4 you know, this was prepared by the
5 attorneys for defendants in this case.
6 Q. (By Mr. Holford) Well, when you reviewed it, Dr. Hays,
7 you got your own understanding of it before you could
8 approve it, right?
9 A. Yes.
10 Q. Okay. So to your understanding, what intoxicating
11 drugs are meant there?
12 A. Well, there are a number of drugs which cause
13 intoxication in the same manner that alcohol does.
14 For example, we could include cocaine, heroin, some
15 of the other drugs like that.
16 Q. Amphetamines?
17 A. In terms of acute intoxication, yes, you can include
18 amphetamine; although, it has a different action,
19 certainly, than the other two drugs do.
20 Q. Is the term intoxicating drugs there equivalent to
21 addiction to those drugs?
22 A. You mean -- I'm not sure I understand your question.
23 Do you mean, are intoxicating drugs addicting; or am
24 I only talking about addictive drugs there? What --
25 Q. Well, I --

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1 A. -- what's your question?
2 Q. -- think either of those would -- yes, sir. When
3 you --
4 MR. SHEFFLER: Well, ask one of them.
5 Q. (By Mr. Holford) When you use the term "intoxicating
6 drugs," do you mean drugs that are addicting?
7 MR. SHEFFLER: Objection. I have no
8 objection if you're asking him: Are
9 intoxicating drugs -- are all intoxicating
10 drugs addictive drugs. But I have an
11 objection to asking it the way you did this
12 referring to this document because, as I
13 said, the document was prepared by the
14 attorneys for American Tobacco Company.
15 MR. HOLFORD: I asked his under-
16 standing.
17 MR. SHEFFLER: Of what we thought when
18 we wrote that?
19 MR. HOLFORD: I didn't mention that,
20 Mr. Sheffler.
21 MR. SHEFFLER: Well, then I don't
22 understand the question; and I object to it
23 on the basis of form.
24 Q. (By Mr. Holford) More importantly, do you understand
25 the pending question, Dr. Hays; or do you want me to

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1 rephrase it?
2 A. Well, you know, it would help me to either restate it
3 or rephrase it for me.
4 Q. All right. You used -- or the term used there is
5 "intoxicating drugs." As you understand that, is
6 that equivalent to addicting drugs?
7 A. You mean do intoxicants have addictive potential?
8 Q. All right.
9 A. Yes.
10 Q. Is alcohol addicting?
11 A. It is a substance that is included in most
12 definitions of addicting substances, yes.
13 Q. Do drugs like cocaine and heroin impair the user's
14 judgment and decision-making abilities at all times
15 during the course of their usage of the drug?
16 MR. SHEFFLER: Objection.
17 MR. CRUSE: Object to the form.
18 MR. SHEFFLER: Objection as being too
19 broad.
20 MR. CRUSE: Vague and ambiguous.
21 A. If I understand your question, let's take it with one
22 substance at a time.
23 Does alcohol impair your judgment? Is that what
24 you mean?
25 Q. (By Mr. Holford) Well, I didn't name alcohol for a

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1 purpose.
2 A. Oh, I know that. I mean, I --
3 Q. Okay. Let's take heroin.
4 A. All right.
5 Q. Okay. Once a person gets addicted to heroin -- I
6 mean, is that how -- I mean, a person starts using
7 heroin; and at some point, they are addicted to it.
8 Is that right?
9 A. Well, does it show those characteristics that are
10 discussed as addictive? Yes.
11 Q. Can I call it, a person becoming addicted to it?
12 MR. SHEFFLER: Can you call it -- I
13 object to the form of the question.
14 Q. (By Mr. Holford) I mean, is that a correct usage of
15 the term?
16 A. There are a number of professionals that use it that
17 way, yes.
18 Q. Okay. And so, once a user of heroin becomes addicted
19 to it, is that person's judgment and decision-making
20 abilities concerning the use of the substance,
21 heroin, are they impaired at the time the person is
22 using the heroin and at times when the person is not
23 using the heroin?
24 MR. RILEY: Object to the form.
25 Q. (By Mr. Holford) That is, continuously over the time

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1 they are addicted?
2 MR. SHEFFLER: Objection to the form
3 of the question.
4 Do you understand the question?
5 THE WITNESS: Well, I'm not sure I
6 do. I mean...
7 Q. (By Mr. Holford) Let me break it up then.
8 MR. SHEFFLER: Let me just advise the
9 witness -- although, you may not need this
10 advice, let me state it anyhow, Doctor. If
11 there is a question directed to you by Mr.
12 Holford that you don't understand, please
13 indicate so.
14 MR. HOLFORD: He's been doing that.
15 He has to think about whether he
16 understands it or not.
17 MR. SHEFFLER: We all do.
18 Q. (By Mr. Holford) But I'll be more definite on this
19 one.
20 Let's say a person, a young person, you know,
21 meets this dealer at the edge of the schoolyard and
22 takes the first use of heroin. And some period
23 later, after using the substance now and then, they
24 become addicted to it and start showing the signs of
25 addiction to the drug.

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1 And let's say that -- what's a fairly usual
2 period of use of a heroin user? Daily or every six
3 hours or --
4 MR. SHEFFLER: Objection to the form.
5 Q. (By Mr. Holford) I'm afraid I don't know that. What
6 is an appropriate figure to use?
7 MR. SHEFFLER: Objection to the form.
8 It's over broad and vague.
9 A. Most individuals who use heroin use it daily;
10 although, there are various patterns of use,
11 including binge use and weekend use.
12 Q. (By Mr. Holford) Okay. So let's say this user is
13 using this heroin daily, okay? And let's just say
14 9:00 o'clock each morning, just for the hypothetical,
15 okay.
16 Now, is -- and this person we're talking about
17 at a point at which they become addicted to the use
18 of the heroin and thereafter, as long as they are
19 using the heroin, okay. And they use it daily and at
20 the same time in the morning. Okay.
21 Now, is that person's judgment and decision-
22 making abilities impaired right after they have taken
23 their heroin for that day?
24 A. Yes.
25 Q. Okay.

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1 A. Because they are intoxicated.
2 Q. Okay. Now, is that person's judgment and decision-
3 making abilities about the heroin use impaired at one
4 hour before the time at which they are going to take
5 the heroin?
6 A. Are they still high from their last dose of heroin or
7 not?
8 Q. Well, I'm not asking --
9 A. What's the blood level of the heroin? I mean, I
10 can't answer that question without me knowing
11 something about the state of the individual.
12 Q. Well, isn't the heroin user's use going to be such
13 that they sustain at least some minimal level of
14 heroin in their blood?
15 A. Not necessarily.
16 Q. Would that depend on the severity of the addiction in
17 that individual?
18 A. No.
19 Q. What would govern that?
20 A. A variety of factors. As I mentioned, there are
21 individuals who use heroin sporadically and they stay
22 high for a while and then they are off of it for a
23 while. And so, you know, their blood level
24 essentially zeros out between those episodes.
25 Q. Well, would you say that people that exhibit that

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1 kind of usage pattern have just not become addicted
2 to the substance?
3 A. No, I think they show many of the addictive
4 characteristics, just like a binge drinker shows the
5 characteristics of alcohol addiction.
6 Q. Do you see alcohol abuse as describable as addicting
7 in the same way as heroin?
8 MR. SHEFFLER: Objection.
9 Q. (By Mr. Holford) Heroin use?
10 MR. SHEFFLER: Objection to the form
11 of the question. Vague and ambiguous.
12 A. If your question is: Does a model of addiction work
13 for heroin that also describes alcohol addiction and
14 so on? Yes.
15 Q. (By Mr. Holford) Is that model of addiction described
16 anywhere?
17 A. Yes. It's described in lots of different places.
18 Q. Well, is it described in the DSM-III-R?
19 A. Yes.
20 Q. Are heroin use and alcohol use described in the same
21 chapters or parts of that volume?
22 A. Yes.
23 Q. Okay. So back to the hypothetical of the heroin user
24 who is addicted and is using the substance at the
25 same time each morning, using it daily, does whether

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1 that person's blood still contain any heroin an hour
2 before their next use depend on how much they used
3 the day before?
4 A. In part, yes.
5 Q. Does it depend on their metabolic rate?
6 A. Yes.
7 Q. Does it depend on their weight?
8 A. Yes.
9 Q. Does it depend on their personality to any extent?
10 A. Well, when you're talking about the metabolic
11 conversion of heroin, I don't think their personality
12 characteristics make much difference there.
13 Q. Okay.
14 A. There are certain personality characteristics that
15 would reflect their metabolic rate, for example.
16 There are individuals who are more hyper than others,
17 and they typically have a metabolic rate which is
18 higher than other people do.
19 Q. Well, in those cases, is the person's high metabolic
20 rate making them hyper?
21 A. I think you can correlate it. I don't know about a
22 causal relationship.
23 Q. Okay. Now, you don't know which is the chicken and
24 which is the egg, in other words?
25 A. That's right.

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1 Q. Okay.
2 A. I mean, to some extent you can influence how your
3 body operates. You do have ways of controlling that.
4 Q. Okay.
5 MR. SHEFFLER: Doug, we've been going
6 about an hour. Is it about time to take a
7 break? My metabolic rate is kind of --
8 MR. HOLFORD: Yeah, if he wants to.
9 Is that all right?
10 THE WITNESS: If this is a convenient
11 place to take a break.
12 MR. HOLFORD: Well, I'm in the middle;
13 but I don't care. I can handle it. Okay.
14 Let's go.
15 THE WITNESS: Thank you very much.
16 Q. Dr. Hays, it just occurred to me; does it make any
17 -- or would it make any difference if we had been
18 talking about cocaine rather than heroin? I mean,
19 are they similar enough to what we have been
20 discussing that it wouldn't matter?
21 A. In terms of -- the action potentials are considerably
22 different, and the behavioral effects are different.
23 But in terms of an individual's ability to make
24 decisions, in terms of their judgment and so on, they
25 are very similar.

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1 Q. Okay. They both impair the human judgment and
2 decision-making abilities in the same way; is that
3 right?
4 A. Not necessarily in the same way, but they do have an
5 effect on them.
6 Q. Okay. Well, is cocaine use today more prevalent than
7 heroin use?
8 A. I do not know. I haven't done the prevalent studies,
9 and I haven't read them.
10 Q. Okay. Let me switch to a cocaine user and ask this:
11 If a user has become addicted on cocaine, is it true
12 that they will adjust their period of use so that
13 their blood level will always contain some minimum
14 amount of the substance, cocaine?
15 A. No. I mean, you're talking about different patterns
16 of drug use that occur and there are some individuals
17 who use cocaine periodically and there are times when
18 there will be no cocaine in their system.
19 Q. But, if they can have no cocaine in their system as a
20 regular thing, are they addicted?
21 MR. SHEFFLER: Objection to the form.
22 A. Just as I used the example of a heroin addict who
23 only uses it occasionally, yes, they can be addicted
24 to it. There will be periods of time for some
25 individuals when they don't have any of the substance

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1 in their system; and yet, they still meet the criteria
2 for addiction.
3 Q. (By Mr. Holford) What criteria are you using there?
4 A. Tolerance, dependence, and relapse.
5 Q. Are those addiction criteria for cocaine and heroin
6 from the DM-III-R (sic)?
7 MR. SHEFFLER: Objection.
8 Q. (By Mr. Holford) What is it? DSM?
9 A. It's the DSM-III-R, Diagnostic and Statistical
10 Manual. I think that they use various terms like
11 that, tolerance, withdrawal, and so on in stead of
12 tolerance, dependence, and relapse; but the elements
13 are the same.
14 Q. Now, did you get those terms -- tolerance,
15 dependence, and relapse, are those criteria, I mean,
16 from a particular source?
17 A. Not any particular source I can refer you to.
18 Q. Are they something that you have developed over your
19 experience?
20 A. I didn't develop it. I adopted it when I was doing
21 the drug work I was doing in the early 1970s.
22 Q. You adopted it from some particular text or writing?
23 A. Not any particular text I can refer you to. That's
24 the way we talked about addiction, and that's the way
25 we talked about treatment. It was the model that we

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1 used of addiction.
2 Q. Okay. Where was that?
3 A. Where was what?
4 Q. You say that "we used." Where were the "we"?
5 A. Okay. The Texas Research Institute of Mental
6 Sciences. It's on my curriculum vitae, and it's
7 where I worked from 1968 to 1985. And it's now the
8 University of Texas Mental Science Institute.
9 Q. And how is tolerance in that criteria defined?
10 A. Tolerance is the characteristic of a substance where
11 you have to use more of it to get the same effect.
12 Q. Does it include where a user will level out and
13 require that same amount of usage?
14 A. Well, obviously, there is a limit to the amount of
15 any substance you can put on board; and if an
16 individual reaches a certain level of response, then
17 they are going to stop at that level. If they reach
18 a point at which they simply cannot take anymore of
19 the substance on board, then they are going to have
20 to stop at that level.
21 It's like drinking water. You can drink a
22 certain amount of water to quench your thirst and you
23 can drink until your stomach is full and then you
24 can't drink anymore, no matter how thirsty you are.
25 Q. So you're saying that a user of cocaine or heroin

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1 might exhibit tolerance -- that is, in requiring more
2 and more to satisfy their need -- but that they still
3 might at some point reach a level of usage, because
4 they either are taking all that they do need to meet
5 their needs or because they have met the upper limit
6 of what their body will tolerate?
7 A. Yes. Or, for example, with heroin, you get into an
8 intoxicated state; and you simply can't use any
9 more. You couldn't prepare it and inject it.
10 Q. Okay.
11 A. The way a drunk passes out, for example. They can't
12 drink anymore when they pass out.
13 Q. What does the criteria dependence mean?
14 A. Dependence or withdrawal has to do with need of the
15 individual for the substance, the physiological
16 responses that you get when they are withdrawing from
17 it.
18 Q. So, if a cocaine or heroin user's blood level drops,
19 blood level of the substance, drops below a certain
20 level, they will start going into withdrawal symptoms;
21 is that what you mean?
22 A. They can, yes; and that's how you define dependence.
23 Q. Well, you say "they can." If a cocaine or heroin
24 user has become addicted on the substance, by
25 definition, don't they always start feeling some

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1 withdrawal symptoms if they go below a certain
2 level?
3 A. Well, I don't know what that certain level is. That
4 certain level of the substance is going to vary from
5 person to person. There is no limit, such as, you
6 know, .1 or .01 alcohol use where, you know,
7 somebody is going to feel intoxicated and another
8 person won't. You know, there is nothing magic about
9 blood levels. Some people begin to experience
10 withdrawal at certain blood levels; and other people
11 would not, for example.
12 Q. Okay. Are you saying, though, that a person who is
13 addicted on cocaine or heroin, that their blood level
14 of the substance might drop to zero and they still
15 not, immediately anyway, experience any withdrawal
16 symptoms?
17 A. Yes.
18 Q. Okay. And, in fact, that period at which they still
19 don't experience any withdrawal symptoms might extend
20 for a longer period of time. Days, maybe. Is that
21 possible?
22 A. It's possible.
23 Q. Okay. But at the end of that time, they are going to
24 start feeling the need for their substance again; is
25 that -- if they are addicted to it?

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1 A. That's the definition of addiction, yes.
2 Q. Okay. So does that account for those type users of
3 cocaine or heroin that you said that might be
4 actually addicted to it but still might go some days
5 between their uses or even be weekend users?
6 A. Yes.
7 Q. And then what does the criteria relapse mean?
8 A. It's an attempt on the part of the individual to give
9 up the substance and their return to it because of
10 the inability to give it up.
11 Q. Do you have any criteria in this model requiring that
12 the substance be psychoactive?
13 A. I don't. The --
14 Q. Does the model?
15 A. Well, if you're talking about the DSM-III-R, you
16 know, the addictions talks about psychoactive
17 substances; but the model of addiction can apply to
18 lots of things, including foods of certain types and
19 even exercise, if you're talking about exercise
20 addiction, now.
21 Q. This model that you are speaking of with tolerance,
22 dependence, and relapse, in other words?
23 A. Yes.
24 Q. Okay.
25 A. Right.

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1 Q. But if you add the requirement of psychoactive
2 substance, perhaps, then, are you restricting the
3 concept of addiction to what you might call drugs?
4 A. Well, the two things are equivalent. Psychoactive
5 substances and drugs are equivalent, as far as I'm
6 concerned. I mean, there are lots of drugs that are
7 not psychoactive, you know, the -- things like
8 penicillin is a drug, but it's not psychoactive.
9 Q. Yes, but penicillin is not an addictive drug, is it?
10 A. Not for me. Not for most people that I know of.
11 Q. Okay. You produced a copy of the Surgeon General's
12 1988 report, right?
13 A. Yes.
14 Q. Did you see on page 7 here, "Criteria for Drug
15 Dependence" -- oh, and the Surgeon General explains
16 here that he's using dependence and addiction
17 interchangeably, right? Did you see that?
18 A. Well, show it to me.
19 MR. SHEFFLER: Objection to the form
20 of the question.
21 Q. (By Mr. Holford) Okay. Right in the paragraph above
22 here. Do you want to read that?
23 A. (Reading.) Well, that's not what this paragraph says.
24 Q. Well, perhaps the paragraph above that.
25 MR. SHEFFLER: What's the question,

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1 Mr. Holford? I've lost the question.
2 MR. HOLFORD: I said the Surgeon
3 General is using the terms "dependence" and
4 "addiction" interchangeably. Maybe it's on
5 the previous page.
6 MR. SHEFFLER: I object to the
7 assumption that the Surgeon General wrote
8 that -- what's entitled --
9 MR. HOLFORD: I'll amend my question.
10 Q. Dr. Hays, does not the Surgeon General's report of
11 1988, in and around page 7, explain that it is using
12 the terms "addiction" and "dependence"
13 interchangeably?
14 A. I don't know.
15 Q. Let me see, sir; I'll find it.
16 A. Okay.
17 MR. SHEFFLER: Why don't you ask him
18 to assume that it does, and we'll go on
19 from there?
20 MR. HOLFORD: Well, I like to be sure.
21 MR. SHEFFLER: All right.
22 Q. (By Mr. Holford) On page 7 here, the start of the
23 second full paragraph, you see it says: The terms,
24 quote, drug addiction, end quote, drug dependence are
25 scientifically equivalent. Do you see that part?

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1 A. All right. Yes.
2 Q. Okay.
3 A. And let me just finish reading that sentence.
4 Q. Yes.
5 A. But the terms refer to the behavior of repetitively
6 ingesting mood altering substances by individuals.
7 Q. All right. Now --
8 A. Wait just a minute.
9 Q. Okay.
10 A. The term "drug dependence" has been increasingly
11 adopted in the scientific and medical literature as a
12 more technical term; whereas, the term "drug
13 addiction" continues to be used by NIDA and other
14 organizations when it is important to provide
15 information at a more general level. Throughout the
16 report, both terms are used; and they are used
17 synonymously.
18 So there is -- you know, the Surgeon General or
19 whoever wrote this part says there is a difference;
20 but in this report, there is not a difference.
21 Q. Okay. Now then, what I meant to ask you about is
22 here, on page 7, under Criteria for Drug Dependence;
23 and the primary criteria, it says, are highly
24 controlled or compulsive use, psychoactive effects,
25 and drug reinforced behavior.

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1 Now, do those three criteria, to your under-
2 standing, translate -- or can you translate them into
3 the model that you gave of tolerance, dependence, and
4 relapse?
5 And I might say, there is some additional
6 criteria under there, too; and you could use those,
7 too, if they help.
8 MR. SHEFFLER: To -- to -- objection
9 to the form of the question.
10 A. Are you saying the tolerance dependence relapse model
11 is contained here; is that what you're saying?
12 Q. (By Mr. Holford) I'm not saying -- I'm only asking
13 you, sir, if the criteria in that report on page 7,
14 can you, to your understanding of what those words
15 say, translate that to be consistent with the model
16 that you gave here for addiction, where the criteria
17 were tolerance, dependence, and relapse?
18 A. Well, I think they are looking at different aspects
19 of addiction. Tolerance, dependence, and relapse has
20 to do specifically with behavioral characteristics
21 and the physiological components and the inability of
22 the individual to change; and that's not necessarily
23 addressed on page 7 where it says "Primary Criteria."
24 Q. Okay. Let me see if I can suggest this, Dr. Hays.
25 Well, first, your model's criteria, relapse,

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1 which you related to attempts to quit, is that not
2 here on page 7 of the Surgeon General's report,
3 relapse following abstinence?
4 A. Well, that's what we're talking about when we're
5 talking about relapse, yes; but you were referring to
6 those first three elements under the primary criteria
7 there.
8 Q. I did, and then I said include the additional
9 criteria to help --
10 A. Oh, I see.
11 Q. Okay. Do you want to try that again then, if you
12 include the additional criteria, to the extent they
13 would be helpful? I mean --
14 MR. SHEFFLER: Helpful for what?
15 MR. HOLFORD: For seeing if he can fit
16 his model of tolerance, dependence, and
17 relapse into what the Surgeon General has
18 on page 7 of the Surgeon General's report.
19 MR. SHEFFLER: I object because your
20 original question was: Is his model
21 consistent with what the Surgeon General --
22 if you want to ask him a different
23 question, that's fine; but I would like
24 the record to be clear that it's a
25 different question. So I object to the

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1 ambiguity.
2 Q. (By Mr. Holford) Do you understand the pending
3 question?
4 A. No, I don't.
5 Q. Okay. And I don't see the difference that
6 Mr. Sheffler is talking about.
7 As you read and understand the criteria, the
8 primary criteria and the additional criteria, that is
9 stated on page 7 of the Surgeon General's 1988
10 report, is the model for addiction stated there
11 consistent with the model for addiction that you gave
12 where criteria were tolerance, dependence, and
13 relapse?
14 A. Well, the words "tolerance, dependence, and relapse"
15 do appear under "Additional Criteria" and they are
16 followed by the words so there is some overlap,
17 obviously, between what the Surgeon General has on
18 page 7 of this 1988 report and the model that I used
19 on addictions.
20 Q. Okay. Are you saying then that the criteria stated
21 by the Surgeon General on page 7 of his report
22 contain the criteria that you stated in your model of
23 tolerance, dependence, and relapse?
24 A. Well, the criteria for drug dependence, as noted on
25 page 7 of the 1988 report, do mention the words

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1 tolerance, dependence, and relapse, yes.
2 Q. Well, if the words mean what they say, do the
3 criteria on page 7 of the Surgeon General's report
4 include the criteria you stated in your model of
5 tolerance, dependence, and relapse?
6 MR. SHEFFLER: Objection to the form
7 of the question. Objection to it being
8 argumentative.
9 A. Well, I think tolerance, dependence, and relapse as a
10 model is included in this description of the criteria
11 for drug dependence on page 7 of the 1988 Surgeon
12 General's report.
13 Q. (By Mr. Holford) Okay. And then, in the "Primary
14 Criteria," the Surgeon General's Report, among
15 others, adds the psychoactive effects that we
16 discussed; is that right?
17 MR. SHEFFLER: Objection. Asked and
18 answered.
19 A. The answer is yes.
20 Q. (By Mr. Holford) Okay. And that would serve to
21 distinguish addiction to exercise, as you called it,
22 from addiction to drugs.
23 MR. SHEFFLER: Objection.
24 A. No, it wouldn't. Individuals who exercise routinely
25 and extensively report that there is a psychoactive

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1 component. They get a high from doing it.
2 Q. (By Mr. Holford) Oh, all right. Okay. The criteria
3 stated by the Surgeon General's report of
4 psychoactive effects would distinguish addictive
5 drugs from drugs such as penicillin, right?
6 A. Yes.
7 Q. What are all the bases for your opinion that nothing
8 in cigarettes prevents a smoker from either deciding
9 to quit smoking or from successfully acting upon such
10 a decision?
11 That is one of your opinions; is that right?
12 A. Yes.
13 MR. SHEFFLER: Objection. It's
14 over broad.
15 MR. HOLFORD: What are the grounds for
16 that opinion? That's over broad?
17 MR. SHEFFLER: Well, when you say all
18 the bases that --
19 MR. HOLFORD: I want all of them
20 all right.
21 MR. SHEFFLER: I think you could go
22 about it in a little more forthright way is
23 why I object.
24 MR. HOLFORD: Forthright?
25 MR. SHEFFLER: Okay. Leave off the

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1 forthright. I object.
2 Q. (By Mr. Holford) Do you want me to restate that?
3 A. No. I mean, the number of years that I've worked in
4 treatment of individuals who have various kinds of
5 addictions; the understanding that I have of the
6 function of various psychoactive substances; my
7 understanding of the difference between, say, alcohol
8 as a substance and cocaine or heroin as a substance,
9 and nicotine, those all go to form my opinion about
10 that.
11 Q. Are those all of the bases for that opinion that you
12 can think of right now?
13 A. Yes.
14 Q. Okay. What differences are you meaning between
15 alcohol and cocaine?
16 A. Alcohol, for example, operates to depress higher
17 cortical functioning; and that robs an individual of
18 their judgment. And once they begin to ingest
19 alcohol, they cannot make decisions as efficiently
20 and effectively as they might otherwise.
21 Q. Well, is there a difference between people who are
22 alcoholics and the rest of us?
23 A. No, not in terms of the effects of alcohol.
24 Generally, individuals who ingest alcohol have a
25 depressed ability to make decisions. They get slower

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1 in their physiological functioning, they get slower in
2 their response time to stimulate, and it's almost a
3 linear relationship. Alcoholics who are tolerant to
4 the effects of alcohol will show fewer of the
5 behavioral characteristics of someone who is
6 intoxicated than others who are naive to alcohol when
7 they first become intoxicated.
8 Q. If any person drinks alcohol long enough, will they
9 become an alcoholic?
10 MR. CRUSE: That's kind of vague and
11 ambiguous; so, I'll object to the form.
12 Q. (By Mr. Holford) Is that what makes a person an
13 alcoholic, a long enough history of drinking
14 alcohol?
15 MR. SHEFFLER: Objection.
16 A. It certainly is a criteria that I use. If someone is
17 drinking too much over too long a period of time,
18 it's the first thing that comes to my mind; they are
19 an alcoholic.
20 Q. (By Mr. Holford) Is alcoholism a sickness caused by
21 genetics?
22 MR. SHEFFLER: Objection to the form.
23 A. Asked that way, I have to say no.
24 Q. (By Mr. Holford) So, any one of us has the genetic
25 capability to become an alcoholic?

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1 A. If you have a digestive system and a hand, you have
2 got the ability to become an alcoholic.
3 Q. What is it then that -- or is there anything that
4 distinguishes those people who become alcoholics from
5 those people who drink regularly, drink alcohol
6 regularly, but do not become alcoholics?
7 A. Well, how regular are they drinking; and how much are
8 they drinking? I mean, you know, you have got to
9 tell me that before I'll decide whether or not they
10 are an alcoholic.
11 And there are, again, individuals who I would
12 define as having an alcoholic problem, they are
13 alcohol addicted or they are alcohol abusers,
14 whatever you want to call it, who use it
15 periodically, again, the same way I've described the
16 heroin addict who uses it only occasionally.
17 If a person only drinks once a year but they get
18 in their car and drive while they are intoxicated,
19 they have got a problem.
20 Q. Well, they have certainly got a legal problem.
21 A. They have got more than that.
22 Q. You mean, if they do that year after year after year?
23 A. That's right. If they do it once, they have got a
24 problem.
25 Q. What are the differences between a person addicted to

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1 alcohol and a person addicted to cocaine then?
2 MR. SHEFFLER: Objection.
3 MR. RILEY: Object to the form.
4 Q. (By Mr. Holford) I thought you said there were some.
5 MR. SHEFFLER: One is alcohol, and one
6 is cocaine. The question speaks for
7 itself. Objection.
8 MR. HOLFORD: You're not being deposed
9 here, Mr. Sheffler.
10 MR. SHEFFLER: Well, I'm sorry. But I
11 have the right to make objections and, when
12 you ask a question which answers itself, it
13 is objectionable as to form and I just made
14 the objection.
15 MR. HOLFORD: No, sir. You did not
16 just make the objection.
17 MR. SHEFFLER: I certainly did. I
18 said the question was objectionable for
19 form because the question answers itself.
20 You asked him: What's the difference
21 between cocaine and alcohol? And the
22 difference obviously is one is cocaine, and
23 one is alcohol. That's the objection that
24 I made.
25 MR. HOLFORD: And your function here

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1 is limited to making objections --
2 MR. SHEFFLER: That's what I'm doing,
3 sir.
4 MR. HOLFORD: -- Mr. Sheffler.
5 MR. SHEFFLER: And your function is
6 limited to asking questions. I'm making
7 objections. You ask questions.
8 Q. (By Mr. Holford) Well, I'm going to have to go back,
9 Dr. Hays. I thought you said that there were
10 differences between the addictions to cocaine, to
11 nicotine, and to alcohol.
12 MR. SHEFFLER: Objection.
13 Mischaracterizing the testimony.
14 MR. HOLFORD: Well, if I did, he'll
15 know it.
16 Q. Now, sir, did I get that wrong or --
17 A. Well, I'm not sure what you're referring to. I
18 thought we were talking about cocaine and alcohol and
19 the different functions they have. The model of
20 addiction works with them -- tolerance, dependence,
21 and relapse -- although, the function of cocaine is
22 different than alcohol. Alcohol is a central nervous
23 system depressant. Cocaine is not. It's a stimulant.
24 Q. All right. Is that what you were referring to by the
25 differences in between those two addictions, because

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1 the substances act differently on the individual?
2 MR. SHEFFLER: Objection to the form.
3 Do you recall the question and answer he's
4 referring to?
5 MR. CRUSE: Well, the problem is, when
6 you say "differences," he doesn't know what
7 you're talking about. If you can define
8 what you're talking about as differences,
9 that's what's wrong with the form of the
10 question.
11 MR. SHEFFLER: May I make a
12 suggestion?
13 MR. HOLFORD: No, sir.
14 MR. SHEFFLER: Okay.
15 Q. (By Mr. Holford) I was talking about whatever
16 differences you were talking about.
17 MR. SHEFFLER: Do you recall the
18 question where he was -- that he is
19 referring to?
20 THE WITNESS: No, I really don't.
21 MR. SHEFFLER: That was going to be my
22 suggestion.
23 Q. (By Mr. Holford) Are the only differences, in your
24 opinion, between addiction to alcohol and addiction
25 to cocaine that alcohol is a depressant of the human

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1 system and cocaine is a stimulant?
2 A. No, that's not the only difference.
3 Q. What others are there?
4 A. The other difference is that alcohol is a legal
5 product that can be obtained legally by adults, and
6 cocaine is not. It's illegal. And that changes the
7 nature of the problem the individual has got
8 significantly, in my opinion.
9 Q. Okay. Now, in your opinion, are there differences
10 between addiction to nicotine and addiction to
11 cocaine?
12 MR. SHEFFLER: Objection. Assumes
13 facts not in evidence.
14 A. Does the model of addiction to any substance work for
15 tobacco? Yes, it does. Is there a difference in the
16 way cocaine operates and the way tobacco operates?
17 Yes.
18 Q. (By Mr. Holford) All right. What model are you
19 applying that you say fits to nicotine?
20 A. My model. Tolerance, dependence, and relapse.
21 Q. So how do the addictions to nicotine and cocaine
22 differ, in your opinion?
23 A. Well, as a difference between alcohol and cocaine,
24 the difference between cocaine and nicotine or
25 tobacco use, tobacco is a legal product. Cocaine is

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1 not legal. That changes the nature of the person
2 obtaining it; and that's pretty significant, in my
3 opinion.
4 Cocaine robs the individual, as does alcohol, of
5 the decision-making ability. The more you use, the
6 less able you are to make decisions about the use of
7 that product, cocaine or alcohol. That's not true of
8 tobacco. That's not true of nicotine.
9 Q. All right. I want to refer now to the Surgeon
10 General's 1988 report, page 9. It states "Major
11 Conclusions." Do you see that?
12 A. Yes.
13 Q. Okay. And this is an introductory chapter, and these
14 are the major conclusions of the whole report.
15 A. Right.
16 Q. Okay. And it says, No. 1: Cigarettes and other
17 forms of tobacco are addicting.
18 Do you agree with that?
19 A. I agree that that's what that says, yes.
20 Q. I mean, do you agree with that concept? That
21 statement?
22 A. I do agree that the model tolerance, dependence, and
23 relapse can be applied to cigarette use, yes.
24 Q. Well, does that answer differ from the statement here
25 that cigarette and other forms of tobacco are

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1 addicting? Do you agree with that?
2 A. No.
3 MR. SHEFFLER: Objection. Asked and
4 answered.
5 Q. (By Mr. Holford) In your opinion, is that a true
6 statement?
7 A. No, I don't agree with the statement the way it is
8 there.
9 Q. Does the model you proposed -- I'm sorry. Does the
10 model you put forth of tolerance, abstinence, and
11 dependence -- no, I didn't state that right.
12 Does the model that you put forth of tolerance,
13 dependence, and relapse fit cigarette and other form
14 of tobacco use?
15 A. Yes.
16 Q. By that model, are cigarettes and other forms of
17 tobacco use addicting?
18 A. They may be.
19 Q. Depending on what?
20 A. On whether or not the person shows the
21 characteristics of an addiction.
22 See, what you're talking about is use versus
23 addiction; and, if the model fits, then the individual
24 is an addict to whatever substance.
25 Q. Well, let's go on here; and we'll come back to that,

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1 Dr. Hays.
2 No. 2: Nicotine is the drug in tobacco that
3 causes addiction.
4 Do you agree with that?
5 A. I don't agree with the way that's stated.
6 Q. How would you state it?
7 A. Nicotine is one of the psychoactive substances in
8 cigarettes.
9 Q. So you're disagreeing that it's the only drug in
10 tobacco that causes addiction?
11 A. No, I didn't say that at all. I said it was one of
12 psychoactive substances in cigarettes.
13 Q. Well, what do you say in tobacco causes addiction
14 when it does?
15 MR. SHEFFLER: Objection to the form.
16 Q. (By Mr. Holford) If you know now. If you don't -- if
17 you -- you know, if it's a chemist question and
18 you're not a chemist or something like that, tell me.
19 A. I don't think it's a chemist question at all. I
20 think, if you look at it strictly from a chemical
21 standpoint, you're going to see nicotine as one of
22 the principal components of tobacco; and if you look
23 at it from a totally behavioral standpoint, nicotine
24 is only one part of it.
25 Q. Well, this states only that nicotine is the drug in

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1 tobacco, right? This isn't talking about any other
2 aspect of the use of tobacco, is it?
3 A. No. It says what it says.
4 Q. It says only that the nicotine is the drug in tobacco
5 that causes addiction.
6 MR. SHEFFLER: That's what it says.
7 Q. (By Mr. Holford) Do you still disagree with that?
8 MR. SHEFFLER: Objection. Asked and
9 answered.
10 MR. CRUSE: Just two minutes ago.
11 A. I think I have answered the question.
12 Q. (By Mr. Holford) Okay. You stand on your prior
13 answer, in other words?
14 A. Right.
15 Q. Okay. What would you say about nicotine in tobacco
16 and addiction to tobacco? What is your opinion about
17 that nicotine?
18 MR. SHEFFLER: Objection. Ambiguous.
19 Vague.
20 Q. (By Mr. Holford) Do you draw any conclusion
21 concerning tobacco being addictive from the fact that
22 it contains nicotine?
23 A. No, that's not necessary for me to understand the use
24 of cigarettes.
25 Q. Okay. So you can agree with Item No. 1 here without

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1 having to agree with No. 2?
2 MR. SHEFFLER: Objection.
3 MR. CRUSE: That's mischaracterizing
4 his testimony.
5 MR. SHEFFLER: That's mischaracterizing
6 his testimony.
7 THE WITNESS: Yes.
8 Q. (By Mr. Holford) Is that right?
9 A. Yes. I didn't agree with No. 1 either.
10 Q. Oh, well -- all right.
11 MR. SHEFFLER: Let the record reflect
12 that Dr. Hays was saying, yes, that the
13 testimony that you characterized was
14 mischaracterized.
15 MR. HOLFORD: Well, the record will --
16 I don't know why you think you can talk and
17 change what's on the record, Mr. Sheffler.
18 MR. SHEFFLER: Are you objecting to my
19 objection?
20 MR. HOLFORD: I'm objecting to your
21 saying anything but objections in this
22 proceeding.
23 MR. SHEFFLER: I object to that.
24 MR. HOLFORD: Okay.
25 Q. Now, Dr. Hays, is it your opinion that cigarettes and

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1 other forms of tobacco can be addicting?
2 MR. SHEFFLER: Objection. Asked and
3 answered.
4 A. I answered that in a slightly different way. I said
5 they may be.
6 Q. (By Mr. Holford) May be addicting. And the "may" is
7 not that they are, in fact, sometimes addicting but
8 that they may or not be addicting with particular
9 people?
10 A. That's right because the model of addiction has to do
11 with the behavioral aspects of the particular
12 individual and how they deal with the substance.
13 Q. Okay. And because your model of addiction deals with
14 the behavioral aspects of the user, you're simply not
15 concerned with No. 2, which is whether or not
16 nicotine is the drug in tobacco that causes
17 addiction?
18 A. It's irrelevant. That's right.
19 Q. Okay. Now, how about No. 3 on page 9 of the Surgeon
20 General's report: The pharmacologic and behavioral
21 processes that determine tobacco addiction are
22 similar to those that determine addiction to drugs
23 such as heroin and cocaine.
24 Do you agree with that?
25 A. The model of tolerance, dependence, and relapse

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1 would be consistent with what's contained there,
2 namely, the pharmacological and behavioral processes
3 that determine tobacco addiction are similar to those
4 that determine addiction to drugs such as heroin and
5 cocaine and any other substance to which an
6 individual might become addicted.
7 Q. Now, sir, you mentioned indicators of nicotine
8 addiction, I believe.
9 Let me -- all right. Let me back up.
10 How do you know whether a person is addicted to
11 nicotine or not?
12 A. You apply the model, tolerance, dependence, and
13 relapse.
14 Q. Well, are there anymore readily applicable criteria,
15 such as how many cigarettes a smoker smokes or how
16 soon after they get up do they grab for that pack or
17 anything like that?
18 A. It's not necessary that they smoke a certain amount.
19 It's necessary that they have the behavioral
20 characteristics that fit the addiction model.
21 Do they want to quit? Have they stopped? Have
22 they been unable to stop when they tried to quit?
23 That's the relapse part of it.
24 Dependence has to do with whether or not they
25 show the characteristic symptoms with withdrawal of

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1 the substance and the -- for example, for alcohol,
2 when you're addicted to it and begin to dry out, you
3 go into DTs, delirium and tremors.
4 And if they are showing the physical character-
5 istics and behavioral characteristics of an individual
6 withdrawing from the drug, then they have got the
7 physiological dependence or psychological dependence.
8 The tolerance has to do with whether or not they
9 increase their dose level over time.
10 Those are the things that you look at.
11 Q. Well, of course, all smokers, when they start out
12 experimenting or however they start out, they arrive
13 at some level usage over their life of smoking, do
14 they not?
15 MR. SHEFFLER: Objection to the form.
16 A. Most individuals do reach a certain level at which
17 they use substances like tobacco, yes.
18 Q. (By Mr. Holford) And that fact doesn't exclude them
19 from being addicted, does it?
20 A. Not if they have shown the need to increase that dose
21 over time.
22 Q. Well, for instance, if a person starts off on, you
23 know, what they can get, a couple of cigarettes a
24 week and then go to a pack a week and then go to, you
25 know, a pack every three days and then go to a pack

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1 everyday and go to a pack and a half a day and go to
2 somewhere between a pack and a half and two packs a
3 day and that's where they stay, that's exhibiting
4 that tolerance, isn't it?
5 A. Yes.
6 Q. And withdrawal symptoms are different in different
7 people, aren't they, in different circumstances?
8 A. For what substance?
9 Q. Oh, let's take cocaine. When some people are caught
10 and thrown in the slammer, they climb the walls,
11 don't they?
12 A. Yes. For lots of reasons, not just that they are
13 coming off drugs. There are certain constellations
14 of behaviors that people exhibit when they are coming
15 off different drugs, yes; and those constellations of
16 physiological responses and psychological responses
17 will be, in part, dependent on the drug.
18 Q. And might they not also, in part, be dependent on
19 what the circumstances of that person stopping the
20 use are?
21 For instance, a person using cocaine has an
22 overdose; and they wake up in -- you know, they are
23 college educated -- probably a lawyer, okay -- and
24 they wake up in the hospital.
25 And the doctor -- they say, "What happened?"

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1 And the doctor says, "You OD'd on cocaine. You
2 almost died. We had to work for 10 hours to save
3 your life."
4 Okay. And so that person doesn't use cocaine
5 anymore, okay; but they don't show any -- you know,
6 anything you can see. I imagine, if you measured
7 their blood pressure and heart rate and so on, they
8 might show -- they would show something, but they
9 don't show any withdrawal symptoms under those
10 circumstances. That doesn't exclude them from having
11 been addicted to it, does it?
12 MR. SHEFFLER: I think I may object to
13 the form of that question. Well, is that
14 the end of the question?
15 Q. (By Mr. Holford) Well, jokes by the lawyers aside
16 now, does that kind of experience --
17 MR. SHEFFLER: That wasn't the basis
18 for the objection.
19 MR. CRUSE: What's the question?
20 Q. (By Mr. Holford) -- exclude that user from having
21 been addicted?
22 A. Well, no. You haven't told me enough about that
23 particular person to know whether he was addicted or
24 not. You might ingest too much of a particular
25 substance not knowing what it was and wind up OD'ing

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1 on it and wind up in the hospital.
2 You know, if you're saying this person was an
3 addict, if he did show tolerance -- that is, he used
4 more over time; as he acquired money, he acquired
5 cocaine; spent all his spare time and spare money,
6 and not even spare money, acquiring it and using it,
7 he's showing tolerance.
8 Q. Yes, sir. And let's say he might have done that in
9 my hypothetical or he might not have. All I said
10 was: The fact that, under those circumstances, that
11 user is too busy thanking God and being afraid to
12 have any withdrawal symptoms, exhibit any, that could
13 happen; and that doesn't exclude them from having
14 been addicted. We don't know whether they were or
15 not; but that doesn't exclude them from having been
16 addicted, does it?
17 A. If they don't show withdrawal symptoms, I'm less
18 likely to think that they are addicted; it doesn't
19 fit the model. The individuals who are addicted are
20 going to show some physiological response to that or
21 some psychological response to that.
22 And, you know, if they think the grace of God has
23 blessed them and that gets them through it without
24 the physical responses, that's great, that's good for
25 them; but I'm going to question exactly how addicted

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1 they were.
2 Q. Right. You might question it, Dr. Hays; but the fact
3 is, it's substantially possible -- I mean, it's
4 meaningfully possible -- not just that anything is
5 possible -- it's meaningfully possible that that
6 person was, in fact, addicted; but having gone
7 through what he went through, his body is in too much
8 of a shock maybe. He doesn't have these --
9 A. No.
10 Q. -- withdrawal --
11 MR. CRUSE: You're asking a question
12 whether his opinion is based on meaningful
13 possibility?
14 MR. HOLFORD: Uh-huh.
15 A. If a person is addicted to cocaine, they are going to
16 show some withdrawal symptoms.
17 Q. Well, yes, sir. But that isn't the sum of the
18 question. I'm trying to point out in this hypo-
19 thetical, Dr. Hays, that people differ, their
20 circumstances differ, at which they might meet their
21 end abuse; and while the usual may be to have
22 withdrawal symptoms, there can be cases where the
23 withdrawal symptoms that the person has are not
24 really outwardly visible or outwardly knowable.
25 Isn't that right?

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1 A. Unlikely.
2 Q. Well, unlikely but --
3 A. Extremely unlikely. I mean, you know, part of the
4 model of addiction is that you show these symptoms.
5 If you don't show them, you have got to ask yourself
6 was this person really addicted or not.
7 Q. As a psychologist, Dr. Hays, do you acknowledge that
8 a person put in the fear of their life might that
9 fear or shock that associates it with it might lessen
10 what withdrawal symptoms they might otherwise have?
11 MR. SHEFFLER: Object to the form of
12 the question.
13 A. There are certain physiological reactions that people
14 are going to have. How they are manifested, how they
15 are disguised, and so on, is a function of the other
16 things that are going on, yes. Would there never be
17 -- for an addicted person, would there never be any
18 evidence of physiological withdrawal? No. There is
19 going to be something there if you watch for it and
20 so on.
21 Q. (By Mr. Holford) But it might take a professional to
22 see it.
23 A. It might, sure. It might be just somebody willing to
24 say, "Okay, how are you feeling? This is pretty
25 tough to do."

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1 Q. Now, can a person be so addicted on a drug that, if
2 their circumstances never require it, they might
3 never try to quit until some cataclysmic event or
4 something?
5 A. Yes. Howard Hughes is a prime example.
6 Q. What was he addicted to?
7 A. I believe it was pain medication, and I'm not sure of
8 the exact medication. He was an individual who was
9 rich enough to be able to support a habit and never
10 had to come off it until he died.
11 Q. But there wasn't any real question that he was
12 addicted to it?
13 A. Not in my understanding of it. I have no direct
14 knowledge of the case. All I know is what I've
15 heard.
16 Q. All right.
17 MR. ALLEN: Mr. Holford, can you do me
18 a favor and go off the record for a
19 second?
20 MR. HOLFORD: Yes.
21
22 (Discussion off the record.)
23
24 Q. Dr. Hays, your opinions somewhere in Exhibit 3
25 and 3-A -- I think it's in the top page, second

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1 paragraph: Dr. Hays will testify about
2 Mr. Allgood's --
3 MR. SHEFFLER: Personality.
4 Q. (By Mr. Holford) Yeah. Do you see all those different
5 things about Mr. Allgood?
6 A. Yes.
7 Q. Okay. Is your basis for all those opinions in that
8 paragraph based on your reading of Lillian Allgood's
9 deposition?
10 A. No.
11 Q. Well, I mean together with your education and
12 experience?
13 A. No.
14 Q. What else?
15 A. All the depositions that I read related to Sam and
16 his personality.
17 Q. Well, let me break it up then.
18 A. I mean, all those depositions are about Sam Allgood
19 one way or the other.
20 Q. All right.
21 A. And this paragraph is talking about Sam Allgood; so,
22 all those depositions relate to this paragraph in one
23 form or another.
24 Q. Okay. Well, let me go to a particular here. You are
25 going to explain that "his decision to begin was

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1 informed and voluntary."
2 What are you going to base that on?
3 A. The information that I have about him, based on all
4 those documents. I mean, obviously, his stepmother
5 is the best source of information about him when he
6 was younger.
7 Q. Well, isn't that only information about when he began?
8 A. No. We have some information from one of his uncles,
9 as I recall.
10 Q. His step uncle, you mean?
11 A. Step uncle. I'm sorry. Yes.
12 Q. All right. But you don't have their depositions.
13 That's -- oh, you mean some of the other depositions
14 that talk about his step uncles -- oh, you have his
15 brother, Benard. I'm sorry.
16 A. Yeah. That's right. His brother. That's right.
17 Q. So, if I say Ms. Lillian Allgood and his brother,
18 Benard Allgood, do those have the extent of the
19 information you rely on for that opinion to explain
20 that his decision to begin was informed and
21 voluntary?
22 A. Right. If I stumble over some of the Allgoods'
23 names, forgive me. There is an awful lot of them,
24 and I'm not sure I have got them all real straight in
25 my mind all the time.

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1 Q. Okay.

2 MR. SHEFFLER: But whatever it is,

3 it's all in that box over there.

4 A. It's all in the box, exactly.

5 And, obviously, those individuals who knew him

6 when he was younger or heard tales of him when he was

7 younger are going to be the best informants with

8 regard to that decision to start smoking.

9 Q. (By Mr. Holford) And what about the companion to

10 that, "...explain that his decision...thereafter, to

11 continue smoking, was informed and voluntary..."

12 What do you base that on?

13 A. The deposition information.

14 Q. Okay. Now, do you say all of them or...

15 A. Sure. I mean, I said all of them before, too.

16 Q. In your opinion, was Sam Allgood addicted to his

17 cigarette smoking?

18 A. No. I don't think he met the criteria for addiction.

19 Q. And in what way did he lack?

20 A. He, as far as I know, never attempted to quit smoking

21 until he did; so, the relapse was not there. And I

22 don't know what physiological symptoms he showed when

23 he stopped smoking; so, I don't know whether there

24 was withdrawal there.

25 Q. Can you base an opinion on your not knowing, Dr. Hays?

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1 A. I don't remember who took his wife's deposition and
2 what questions they asked, but that's certainly one
3 of the areas I would have explored with her if I had
4 taken her deposition.
5 Q. Right. But his wife was not a physician or
6 psychologist, right?
7 A. It doesn't matter. The characteristics of an
8 individual that shows he's withdrawing from nicotine,
9 from cigarettes, are observable by anyone.
10 Q. If the person is just being there and not particularly
11 talking to you, how do you know?
12 A. Well, we can look at, for example, the DSM-III-R
13 characteristics of withdrawal from tobacco; and an
14 individual around someone who is withdrawing from
15 nicotine or from tobacco will know what's going on
16 with them. Irritability is the primary or one of the
17 primarily characteristics of withdrawal from nicotine.
18 Q. So, if Sam Allgood was irritable after he was
19 told he had throat cancer and he quit, that would
20 indicate to you that he was going through nicotine
21 withdrawal?
22 A. Not necessarily.
23 Q. Well, not by itself but --
24 A. No, not by itself, I mean, you know --
25 Q. That's a factor, though?

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1 A. It certainly is one of the things that you could
2 consider, yes.
3 I mean, anyone that's gotten a diagnosis of
4 cancer is going to go through certain reactions and
5 one of them might be anger or irritability, for
6 example, and those two things can sometimes be
7 confused.
8 Q. Did you see that Sam Allgood was very much afraid of
9 cancer?
10 A. Yes.
11 Q. The experiences with the saccharin and the burnt meat
12 and so on, do you recall that?
13 A. Well, I'm not sure that evidences his fear of cancer,
14 but, yeah. Some people don't use saccharin because
15 it tastes bad; it leaves a bitter aftertaste in their
16 mouth. Some people can't detect that. And I don't
17 know if that was true of him or not. But that
18 doesn't necessarily mean to me that he was
19 cancerphobic because he wouldn't use saccharin.
20 The same thing, some people don't eat burnt
21 meat; they don't like the way it tastes.
22 Q. If his wife's testimony is true, that he quit using
23 saccharin when he heard reports that it might cause
24 cancer, then you would take it as an indicia of fear
25 of cancer, right?

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1 A. I can take her word for it, yes; or I can attribute
2 other meaning to it.
3 Q. Well, you're guessing if you attribute other meaning
4 than what his wife says, right?
5 A. I'm guessing anyway, because I don't know. I haven't
6 been able to talk to Sam about that.
7 Q. You didn't read in her deposition where she said that
8 he quit using saccharin when he heard reports about
9 it possibly causing cancer?
10 A. Yes, I understand that's her testimony.
11 Q. Okay.
12 A. But I didn't have the opportunity to talk to Sam
13 Allgood about that and so...
14 Q. But you don't have any evidence to contradict that?
15 A. That's true.
16 Q. So, if you're going to form an opinion in the area,
17 do you not have to take her statement that he stopped
18 when he was fearful of cancer?
19 MR. SHEFFLER: Objection. The
20 question has been asked and answered.
21 Q. (By Mr. Holford) I mean, do you?
22 MR. SHEFFLER: Asked and answered.
23 A. Well, I think I answered the question.
24 Q. (By Mr. Holford) And, similarly, with burnt meat, I
25 mean, he didn't always not eat burnt meat; he stopped

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1 eating burnt meat when he heard reports that it might
2 cause cancer, according to Bonnie Allgood.
3 MR. SHEFFLER: Is that a question?
4 MR. HOLFORD: Yeah.
5 Q. Do you recall that?
6 A. Well, I'm not sure that was her testimony; but I
7 understand he didn't eat burnt meat. I don't know
8 how long he didn't eat burnt meat or when he stopped
9 eating burnt meat, if he ever did.
10 Q. If Bonnie Allgood testified that Sam Allgood quit
11 eating the burnt parts of meat when he heard reports
12 that it might cause cancer, then that would be an
13 indicia of Sam's fear of cancer, wouldn't it?
14 A. It might be, yes.
15 Q. Well, it is, unless you can come up with some other
16 reason, right?
17 MR. SHEFFLER: Objection.
18 MR. CRUSE: Well, what possible motive
19 could she have?
20 MR. HOLFORD: Oh, okay.
21 Q. Well, let me follow up to Mr. Cruse's comment.
22 In your forming opinions in this case and in
23 your reading these various depositions, do you take
24 into account your own opinion of the veracity of the
25 various deponents on the various topics they speak

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1 on?
2 A. I'm sure that plays a part in it. I mean, obviously,
3 a witness who has got an investment in the outcome of
4 the case, you read that with that idea in mind.
5 Q. So you're saying that you might disown or disclaim
6 what Bonnie Allgood said was the reason Sam started
7 not eating burnt meat?
8 A. No, I didn't say at all.
9 Q. Well, I mean...
10 A. I said I might not accept what she's got to say
11 completely, and I don't necessarily attribute what
12 she says to Sam. I can't do that.
13 Q. Well, I'm here now to the find out what you think in
14 this case.
15 A. Right.
16 MR. SHEFFLER: That's what he's
17 telling you.
18 Q. (By Mr. Holford) So I want to know right now what you
19 think of Bonnie Allgood's testimony if you assume
20 that she said this, that Sam Allgood quit eating the
21 burnt parts of meat when he heard that doing so might
22 cause cancer.
23 MR. SHEFFLER: Objection. No. 1,
24 objection to the assumption. No. 2,
25 objection to form. No. 3, objection, asked

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1 and answered.
2 A. I have to accept that that's what she believes. I
3 don't think she's lying, no.
4 Q. (By Mr. Holford) Well, and do you accept that's why
5 Sam stopped eating the burnt parts of meat?
6 A. No.
7 Q. Why not?
8 A. Because I didn't have the opportunity to talk to Sam.
9 I didn't have the opportunity to explore that with
10 him. All I have is her idea about that, and it's --
11 you know, you're asking me to take everything that
12 she says and believe that that's what Sam Allgood
13 believed. I can't do that.
14 Q. Well, don't you think that if she testified as I said
15 she did that what she is saying is what she observed
16 rather than what she just believed -- just what she
17 just believed?
18 A. It could well be that Sam Allgood stopped eating
19 burnt meat, or maybe he never did it. I don't know.
20 She believes that he stopped because he was afraid of
21 cancer, and that's fine. I'm willing to accept that.
22 But I cannot take that as what Sam believed because
23 Sam is not here to answer those questions.
24 Q. Now, I'm going to give you another assumption that I
25 think I can say is reasonably inferable from what

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1 Bonnie actually testified to, okay?
2 They are preparing a barbecue for friends some
3 day. Sam is sitting in his big easy chair and
4 watching TV; and a report comes on the TV, okay. And
5 Bonnie is in the kitchen. She hear's the report,
6 right?
7 And it says: People beware! Don't eat burnt
8 meat. It my cause you cancer.
9 Okay. And so, Sam gets up; and he says, "Well,
10 Bonnie," you know, "try not to burn that meat; or I'm
11 going to have to cut it off because I'm not going to
12 eat that burnt meat anymore."
13 Okay. Now, in that scenario, do you take Sam's
14 not eating burnt meat thereafter as an indicia of his
15 fear of cancer --
16 MR. SHEFFLER: Objection.
17 Q. (By Mr. Holford) -- if my assumptions are correct and
18 my inference is reasonable?
19 MR. SHEFFLER: Objection.
20 MS. FEE: Objection.
21 MR. SHEFFLER: Objection. It's
22 compound, if you're asking him to assume
23 that as a fact or are you asking him to
24 assume that your inference is reasonable?
25 I object because it's a compound answer to

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1 the question.
2 MR. HOLFORD: Of course I'm asking him
3 to assume those two things.
4 MS. FEE: Objection. Asked and
5 answered.
6 MR. SHEFFLER: Well, they are two
7 different things.
8
9 (Ms. Fee and Mr. Sheffler
10 talking at the same time.)
11
12 MR. SHEFFLER: They are two different
13 things, and it's a compound question.
14 That's the basis of my objection.
15 Q. (By Mr. Holford) Do you understand my question?
16 A. Not anymore.
17 Q. Well, all right. Okay. I want you to assume that
18 the testimony given by Bonnie Allgood is that Sam was
19 sitting in his big, easy chair while the boys were
20 out back preparing a barbecue for friends. And the
21 news on the TV says: People, stop eating burnt meat.
22 It can cause you cancer.
23 And Sam gets up and says to Bonnie, who heard
24 that report, you know, "Did you hear that Bonnie?
25 You tell the boys not to burn that meat; or if they

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1 do, I'm going to have to cut it off. I'm not going
2 to eat that burnt meat anymore."
3 Now, on that assumption, would you take Sam's
4 not eating burnt meat anymore as an indicia of his
5 fear of cancer?
6 MR. SHEFFLER: Did he eat burnt meat
7 before that?
8 MR. HOLFORD: Oh, yes, he ate burnt
9 meat before that.
10 A. Yeah. I'm not going to take that scenario as you
11 presented it to me and assume that he's cancerphobic.
12 Q. Well, whatever you base it on then, Dr. Hays, as a
13 matter of fact, now, do you believe that Sam Allgood
14 was very afraid of cancer?
15 A. I think there is testimony to that effect, yes.
16 Q. Okay. And do you believe he -- start over.
17 Do you recall the testimony that Sam Allgood
18 said, "I've been smoking so long. If it was going to
19 happen to me, it would have already happened. Don't
20 worry. It isn't going to happen to me.
21 MR. CRUSE: I object.
22 Q. (By Mr. Holford) Do you recall that?
23 MR. CRUSE: That assumes facts not in
24 evidence.
25 MR. SHEFFLER: Objection to the form

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1 of the question.
2 Could you read that back? Or maybe,
3 rather than have her read it back, are you
4 saying Sam testified to this?
5 MR. HOLFORD: No, I didn't say that.
6 I said there was testimony that Sam said
7 that as a response to questions about the
8 reports about smoking and health.
9 Q. Do you recall any of that from your reading of the
10 depositions?
11 A. I don't recall that specific scenario, no.
12 Q. Okay. All right, sir. You do recall reading that on
13 February 16, 1987, after about six months of
14 hoarseness, which was intermittent, and primarily
15 because of a bump appearing on his upper neck, the
16 right side, he went in to see Dr. Hink, his doctor.
17 And Dr. Hink looked down his throat with his
18 instrument and said, "Allgood, looks like you've got
19 either cancer or a tumor."
20 Do you remember that?
21 A. I don't remember that that was the exact date; but I
22 do remember that in Dr. Hink's deposition, yes.
23 Q. Okay. And as a psychologist, do you believe that
24 that would have produced a -- that news, at which he
25 no longer used cigarettes, right?

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 A. That's my understanding, yes.
2 Q. Do you believe that his receipt of that news probably
3 put him in a state of shock?
4 A. Well, you're using a medical term, shock, in a way
5 that I, you know, cannot respond to it. Would this
6 news be shocking to anyone? Absolutely.
7 Q. And could not that shocking effect of that news have
8 moderated his visible withdrawal signs?
9 MR. SHEFFLER: Objection. Assumes
10 that there were visible withdrawal signs.
11 A. The expression of withdrawal symptoms is going to be
12 present in anyone who is addicted. The degree with
13 which they are expressed is a function of the degree
14 of their addiction, but they are going to be there
15 one way or the other. And will they be modified by
16 circumstances? Absolutely.
17 Q. (By Mr. Holford) The degree of them would absolutely
18 be modified by such circumstances; is that right?
19 A. To some extent.
20 Q. Do you remember the testimony in Bonnie Allgood's
21 deposition that Sam, in fact, never told her what the
22 doctor had said, but it was either later that day or
23 the next day in their house that a friend was over
24 and Sam told the friend in Bonnie's hearing what it
25 was?

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 A. No, I don't remember that.
2 Q. Oh.
3 MR. CRUSE: I don't remember that
4 either. Why don't we take a break? We've
5 been going another hour.
6 MR. HOLFORD: Well, why is there a
7 break every hour? I don't remember doing
8 that at --
9 THE WITNESS: Because I have a small
10 bladder.
11 MR. HOLFORD: Oh, you want a break.
12 Well, then, fine. All right. If you
13 speak, Dr. Hays, that's fine.
14
15 (Short Recess.)
16
17 MR. HOLFORD: Okay. Are you ready?
18 Q. Dr. Hays, are you saying that you are able to
19 conclude from the depositions that you have read that
20 Sam Allgood, on quitting when informed he had throat
21 cancer, did not exhibit withdrawal symptoms; or are
22 you just saying that you can't tell?
23 A. There is no indication in any of the information I
24 reviewed thus far of him exhibiting withdrawal
25 symptoms.

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 Q. Do you remember reading that Sam was irritable?
2 A. No, I don't remember reading that.
3 Q. Do you remember reading that Sam did not carry on his
4 characteristic conversation with his wife for a day
5 or two after he was told?
6 MR. CRUSE: I'll object to that. That
7 assume facts not in evidence.
8 Q. (By Mr. Holford) Do you recall that?
9 A. No.
10 Q. Do you recall that, in the place of cigarettes, Sam
11 substituted chewing gym?
12 A. It's been so long since I've read Bonnie Allgood's
13 deposition; I don't remember that specifically.
14 Q. Just take those. If those three things are proven to
15 be true, that Sam was irritable, was relatively
16 silent to his wife, and that he chewed gum in the
17 place of cigarettes, would those be indicia of
18 withdrawal to you?
19 A. Not necessarily, no.
20 Q. Do you recall in any of the depositions -- perhaps,
21 John Crainer's in particular -- Sam Allgood at one
22 point trying progressive filters but not for long
23 before he stopped?
24 A. I don't remember which deposition it was, but I do
25 remember something about that.

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 Q. Okay. Is that an attempt to quit for your relapse
2 criteria?
3 A. I would have to reread that to know.
4 Q. Well, what would you --
5 A. I mean, you know, usually --
6 MR. CRUSE: I'll object to the form of
7 question as "that" as being undefined and
8 vague and ambiguous, whatever "that" is.
9 A. You know, I don't know what he was doing when he was
10 trying to do that, using different types of filter
11 and so on or how long he tried them or what they
12 were.
13 Q. (By Mr. Holford) Well, are progressive filters used
14 for anything but seeing what quitting would be like?
15 A. Are you telling me that's what he used? And I -- I
16 don't know which part --
17 Q. I want you to assume that that's what he used, yes,
18 sir.
19 A. Okay. Well, I don't know exactly what product he
20 used or what that mean, a progressive filter. There
21 are devices that you can use that will cut down on
22 the amount of smoke that you get from cigarettes and
23 so on.
24 Q. Are they not used in an attempt to see what, to some
25 degree, quitting would be like?

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 MR. CRUSE: I object to the form of
2 the question. You're giving him a
3 hypothetical and then asking him an
4 assumption on top of that.
5 A. They could be either used to see what quitting is
6 like, what that process is like, as you have said, or
7 reducing the amount of use of the substance, yes.
8 Q. (By Mr. Holford) And if they attempt that but quit
9 that attempt and go back to what was their regular
10 amount of smoking, is that not an attempt to quit?
11 MR. CRUSE: Again, I object. That's
12 vague and ambiguous and assumes facts not
13 in evidence.
14 Q. (By Mr. Holford) That say abandoned?
15 MR. SHEFFLER: Same objection.
16 A. It could be.
17 Q. (By Mr. Holford) And if that process was on the short
18 side, could that not be simply an indication of how
19 badly that person was addicted?
20 MR. CRUSE: Again, I object to "the
21 short side" as being vague and ambiguous
22 and that the question assumes facts not in
23 evidence.
24 A. Not necessarily.
25 Q. (By Mr. Holford) But it could be?

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 MR. SHEFFLER: Objection to the form.
2 A. Not necessarily.
3 Q. (By Mr. Holford) If a person -- if a smoker cuts down
4 their amount of nicotine in, let's say, one day and
5 then drops that idea like a hot potato, isn't that
6 indication that they are severely nicotine addicted?
7 MR. SHEFFLER: Objection. Objection
8 to the form of the question on two
9 grounds. No. 1, it's over broad in that it
10 assumes the use of the word "a smoker"
11 applies to "any" smoker.
12 No. 2, if it's a hypothetical, you
13 haven't given enough information.
14 Q. (By Mr. Holford) Any smoker, long-term smoker? Okay.
15 MR. SHEFFLER: Objection. Still
16 over broad and still doesn't provide the
17 necessary information.
18 A. Ask your question again. I've completely lost the
19 question.
20 Q. (By Mr. Holford) Yes, sir. If any long-term smoker
21 smoking one and a half to two packs a day -- that's a
22 heavy smoker, isn't it? --
23 A. Yes.
24 Q. -- okay -- for some reason, on a particular day,
25 severely cuts down their amount of nicotine and at

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 the end of that day quits that idea and goes back to
2 smoking their full amount, could that not be just an
3 indication of how severely addicted that person is?
4 MR. CRUSE: I object to the form of
5 the question again because it states for
6 some reason they decided to do that, and
7 then you're asking the doctor to say it's
8 for a specific reason. I object to the
9 form of the question for that reason.
10 MR. SHEFFLER: That's a good
11 objection.
12 Q. (By Mr. Holford) Do you have an answer?
13 A. Yeah. You haven't told me why they are stopping or
14 reducing their cigarette use.
15 Q. Well, sir --
16 A. And, you know, in the absence of knowing why they are
17 stopping or why they are reducing it, I don't see how
18 that can be an example of the relapse part of the
19 model.
20 Q. Well, I'll fill it in this way: The person goes on a
21 boat trip for a day and found they have just flat
22 forgotten all the cigarettes; and nobody else on the
23 boat smokes. And, by the time they get back to the
24 shore, they go to the nearest place they can to buy
25 them and smokes up a pack, okay?

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 Now, does not that scenario indicate that that
2 person is severely addicted?
3 A. No, not to me.
4 Q. What does it indicate?
5 A. Well, what it indicates to me is that they want to do
6 that and they make a decision to go find the
7 cigarettes after they get back off of this boat where
8 there aren't any cigarettes, for whatever reason, and
9 they want to engage in the pleasurable activity of
10 smoking.
11 Q. All right. So let's go for a moment back to page 7
12 of the '88 Surgeon General's report.
13 In your opinion, does nicotine in cigarettes
14 over a long enough period for any individual cause
15 highly controlled or compulsive use of cigarettes?
16 A. Well, I don't know what the highly controlled part of
17 that means. Could you explain that to me?
18 Q. Well, I think we can read it here in the report,
19 Dr. Hays, at the bottom. It starts on the bottom of
20 page 7: Highly controlled or compulsive use
21 indicates that drug seeking and drug taking behavior
22 is driven by strong, often irresistible, urges. It
23 can persist despite a desire to quit or even repeated
24 attempts to quit. Such behavior is also referred to
25 as, quote, habitual behavior. To distinguish drug

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1 dependence from habitual behavior as not involving
2 drugs, it must be demonstrated that a drug with
3 psychoactive mood altering effects -- that's the next
4 item.
5 Okay. So that's defining that first element.
6 Now, my question to you is: Does nicotine -- I
7 need to see it, sir.
8 A. I'm sorry.
9 Q. Does nicotine cause or can nicotine cause highly
10 controlled or compulsive use?
11 A. Again, I don't understand the highly controlled part
12 of this and --
13 Q. What I read there? Did I read that correctly?
14 A. You read it correctly, but it doesn't tell me what
15 highly controlled means. And I haven't the foggiest
16 notion, based on this sentence, or page 9 of this
17 report, what highly controlled means.
18 I mean, you know, if you want to take alcohol,
19 for example, there is nothing controlled about an
20 alcoholic's behavior at all, you know; and so, that
21 doesn't apply to alcohol. I mean, I don't understand
22 how it would apply to alcohol.
23 Q. Maybe that report doesn't consider alcohol a drug?
24 A. Well, it's talking about the criteria for drug
25 dependence. It doesn't say criteria for drug

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 dependence excluding alcohol.
2 See, if this is a general model of drug
3 dependence, it's got to apply to all substances.
4 Q. Do you know whether or not that report, the '88
5 Surgeon General's report, on nicotine addiction
6 considers alcohol a drug as defined by the criteria
7 for drug -- that is an addictive drug; I'm sorry --
8 an addictive drug as defined by the criteria for drug
9 dependence starting on page 7 of the report? Do you
10 know that?
11 A. No, I don't know that from --
12 Q. Okay.
13 A. Nor do I know -- well, I -- let me just -- I don't
14 know.
15 Q. Okay.
16 A. Yeah.
17 Q. Now -- well, what about the second part of that first
18 criteria, compulsive use. Can nicotine cause
19 compulsive use --
20 A. Yes.
21 Q. -- in smokers?
22 A. Yes.
23 Q. Does nicotine -- or can nicotine cause psychoactive
24 effects in smokers?
25 A. There is a psychoactive effect to smoking, yes.

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1 Q. And can nicotine cause drug reinforced behavior in
2 smokers?
3 A. Yes.
4 Q. Have you ever heard --
5 MR. HOLFORD: Strike that.
6 Q. Do you agree that one way to just generally broadly
7 describe addiction to a substance is that you no
8 longer control the substance; the substance controls
9 you?
10 MR. SHEFFLER: Objection to the form
11 of the question. It's over broad.
12 A. I understand what that means, and you don't accept
13 that as being the truth.
14 Q. (By Mr. Holford) Okay. So, is what you're saying,
15 Dr. Hays, that you just don't accept an idea of
16 highly controlled use as a criteria for drug
17 dependence?
18 MR. CRUSE: I object. You're
19 mischaracterizing his testimony. He said
20 he didn't know what that meant.
21 A. I didn't know what it meant a few minutes ago, and I
22 still don't know what highly controlled means.
23 Highly controlled means that someone is exercising
24 control over their behavior, to me. I mean, highly
25 controlled means that you are in control; and that's

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 the opposite of what you think about when you think
2 about addictions.
3 Q. (By Mr. Holford) That's the opposite of what you, in
4 your opinion, think about addictions, right?
5 A. That's right. That's what I just said.
6 Q. And the idea that any smoker might be seen as smoking
7 involuntarily is something you don't -- you just
8 can't accept; right?
9 A. That's right.
10 Q. So, if I take your meaning of what highly controlled
11 use as applied to smoking would mean, you, in fact,
12 just don't accept that highly controlled use as a
13 criteria for nicotine dependence --
14 A. No.
15 Q. -- is that right?
16 A. I didn't say that at all. I said I don't understand
17 what highly controlled means in this context.
18 Q. Well, I will ask you to assume that highly controlled
19 means that the use of the nicotine-containing
20 cigarettes controls the user and to a high degree.
21 MR. SHEFFLER: Objection.
22 MR. CRUSE: Objection.
23 Q. (By Mr. Holford) Now, if that's the definition,
24 applied to highly-controlled use, do you agree that
25 is a criteria for drug dependence?

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 MR. SHEFFLER: Objection.
2 MS. FEE: Objection.
3 Q. (By Mr. Holford) I'm sorry. Back up.
4 If highly-controlled use means that nicotine --
5 MR. HOLFORD: Strike that. That's not
6 right either.
7 Q. Do you agree that nicotine can cause a smoker to lose
8 their control over that use because of the nicotine?
9 A. No.
10 Q. Okay. Do you agree that nicotine causes -- I take
11 that back.
12 Do you agree that smoking cigarettes can cause
13 stereotypic patterns of use?
14 A. Excuse me. Did you say nicotine can?
15 Q. Well, I took that back. I said: Do you agree that
16 the smoking of cigarettes can cause stereotypic
17 patterns of use?
18 A. Certainly.
19 MR. CRUSE: He said he took it back.
20 I didn't hear. His question said -- you
21 didn't take it back in your question till
22 he caught you.
23 Q. (By Mr. Holford) Do you agree -- I'm sorry. Is it
24 your opinion that cigarette smoking can cause use
25 despite harmful effects?

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1 A. You mean are there people who smoke despite harmful
2 effects of smoking?
3 Q. And that that is caused by their smoking of the
4 cigarettes?
5 MS. FEE: Objection. Compound.
6 MR. SHEFFLER: Objection. Would you
7 restate the question?
8 MR. HOLFORD: Only if Dr. Hays says he
9 doesn't understand the question.
10 MR. SHEFFLER: Now, wait a minute. I
11 have a right to understand the question,
12 too. I represent a party in this case.
13 The question is ambiguous --
14 MR. HOLFORD: All right, Mr. Sheffler.
15 Q. Do you agree that cigarette smoking can cause use
16 despite harmful effects of the smoking?
17 A. I'm not sure I understand the question. Can
18 cigarette use -- can cigarette use cause use despite
19 it's ill effects?
20 Q. Despite ill effects, yes.
21 MR. SHEFFLER: I object to the form of
22 the question.
23 MR. CRUSE: If you don't understand
24 it, tell him you don't understand it.
25 A. No, I don't understand the question.

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1
2 (Dr. Hays and Mr. Cruse
3 talking at the same time.)
4
5 Q. (By Mr. Holford) So you don't have any opinion on
6 that question; is that right?
7 MR. SHEFFLER: Objection.
8 MS. FEE: Objection.
9 MR. SHEFFLER: He said he didn't
10 understand.
11 MS. FEE: Mischaracterizing what he
12 just said. He said he didn't understand,
13 not that he didn't agree with it.
14 Q. (By Mr. Holford) Do you agree that smokers exhibit
15 continued use despite harmful effects of the smoking?
16 A. Yes.
17 Q. Do you agree that smokers experience relapse
18 following abstinence?
19 A. Yes.
20 Q. Do you agree that smokers experience recurrent drug
21 cravings?
22 A. I'm not sure what drug cravings is, but do smokers
23 that -- where are we?
24 Q. The last one, the current...
25 A. Do smokers who don't have cigarettes go buy them and

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1 use them again? Yes.
2 Q. Well, do you believe that there is a craving process
3 involved there?
4 MR. SHEFFLER: Objection. He's
5 testified he doesn't know what drug craving
6 is as it's used there.
7 A. If by drug craving you mean do they want to get some
8 more, yes.
9 Q. (By Mr. Holford) And do you agree that cigarette use
10 often produces tolerance?
11 A. Well, I think we have already been through that
12 before; and most cigarette users are at a steady
13 state of their use of cigarettes.
14 Q. Yes. But they got there by some process showing
15 tolerance, right?
16 A. Yes.
17 Q. And do you agree that cigarette use often produces
18 physical dependence?
19 A. There are behavioral and physiological sequelae to
20 withdrawing from nicotine.
21 Q. So you conclude that a physical dependence is
22 involved, right?
23 A. Well, the only physical response, I think, that is
24 involved in withdrawal from nicotine is a lower heart
25 rate. The rest of them are more psychological.

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 Q. So a person withdrawing from nicotine, as far as
2 physical manifestations, will show only a lowered
3 heart rate; is that right?
4 A. That's true.
5 Q. And do you agree that smoking often produces pleasant
6 -- that is, euphoric -- effects?
7 A. It certainly is pleasurable to the people that smoke,
8 yes.
9 Q. Do you agree that -- well, maybe -- I'm not sure this
10 is different, but I'll try it.
11 Do you agree that smokers exhibit a highly-
12 controlled use?
13 A. Again, I've got a problem with understanding what
14 highly controlled means? I mean, for example, let's
15 take the Health Science Center. Smoking is banned in
16 our hospital and, yet, we have patients who smoke and
17 we have staff who smoke. And we take them outside,
18 the patients, when they get a smoke break; and staff,
19 on their breaks, go outside if they want to smoke.
20 Is that highly controlled? Absolutely. They
21 are exercising a great deal of control over their
22 smoking.
23 Q. Well, let's look at it another way. Sam Allgood --
24 do you remember this from the testimony, deposition
25 testimony? Sam Allgood kept ten cartons of

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1 cigarettes in his freezer. He bought cigarettes, ten
2 cartons at a time. He kept two packs in his truck
3 glove compartment. He kept two packs in his lunch
4 box. When he was out with his wife, he kept a pack
5 or two in his wife's purse; and he carried a pack on
6 him.
7 On first awakening in the morning -- well, he
8 had them on his bed stand -- he would smoke before he
9 got out of bed.
10 He smoked a pack and a half a day, which,
11 dividing by the waking hours in a day, is about a
12 cigarette every 30 minutes. I believe the effects of
13 a cigarette's worth of nicotine on the system, while
14 it goes to the central nervous system in 8 seconds
15 from a puff, lasts about 30 minutes.
16 Does that meet with your understanding?
17 MR. SHEFFLER: Objection.
18 MS. FEE: Objection.
19 Q. (By Mr. Holford) That last --
20 MS. FEE: Which --
21 Q. (By Mr. Holford) That last statement, that that's how
22 the nicotine works on the system?
23 MR. CRUSE: I object to the form of
24 the question.
25 Q. (By Mr. Holford) About 8 seconds from the puff to the

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1 central nervous system and a cigarette's worth lasts
2 the smoker about 30 minutes?
3 A. I don't know what the half life of nicotine in a
4 cigarette is. I haven't looked at those data in a
5 long time. I do know that substances that you inhale
6 go into the blood stream very quickly; and again, 8
7 seconds, I don't know that the actual potential is.
8 Q. How about half an hour for one cigarette being
9 satisfactory?
10 A. I think I have already answered that.
11 Q. Which is?
12 A. Which is that I haven't looked at the half life of
13 nicotine from cigarettes -- and so, I don't know what
14 that is -- in a long time.
15 Q. Okay. I'm going to continue from my litany, okay,
16 that Sam Allgood had a cigarette the last thing
17 before going to sleep at night and often either woke
18 up to have a cigarette or was woken up and had a
19 cigarette in the middle of the night.
20 Now, does that smoking experience of Sam Allgood
21 describe a highly-controlled use?
22 MR. SHEFFLER: Objection. Unless I
23 missed something in the question -- and I
24 may have, Mr. Holford, objection, if that's
25 stated as facts. If it's stated as a

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1 hypothetical, I object because you gave two
2 alternatives; and therefore, the question
3 is compound. And I may have missed. You
4 may have said, "If it shows."
5 Q. (By Mr. Holford) Well, you can take it as a
6 hypothetical.
7 MR. CRUSE: If a hypothetical, I
8 object because it's a compound question, as
9 you have asked him two different things.
10 MR. HOLFORD: No, I asked him things
11 serially. I interrupted it with a question
12 about the effect of nicotine on the smoker,
13 but -- I mean, you know, how long it was
14 good for him.
15 Q. Do you want me to restate all that?
16 A. Yes, it would help.
17 Q. Okay. Sam Allgood -- now, I'm going to give it as a
18 hypothetical, okay; although, I think every bit of it
19 is in the depositions that you read.
20 A. All right.
21 Q. Okay. Sam Allgood kept 10 packs -- I'm sorry. Sam
22 Allgood kept ten cartons of cigarettes in his
23 freezer. He bought cigarettes 10 cartons at a time.
24 He --
25 MR. CRUSE: He couldn't always have 10

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1 in the freezer.
2 Q. (By Mr. Holford) He kept --
3 MR. CRUSE: It's impossible.
4 Q. (By Mr. Holford) -- two packs in his truck glove
5 compartment. He took two packs in his lunch box. He
6 always, when he was out with his wife, had a pack or
7 two in her purse; and he kept a pack on him in his
8 pocket.
9 Sam Allgood smoked upon awakening. He
10 throughout the day smoked between a pack and a half
11 and two packs a day with typical uses after meals and
12 just spreading them out throughout the day. He
13 smoked the last thing before going to bed. He had
14 often the experience of either being woken up by
15 wanting a cigarette or being woken up otherwise and
16 smoking a cigarette in the middle of the night.
17 Do those facts, hypothetically stated, show a
18 highly controlled use?
19 MR. CRUSE: I object to the form of
20 the question because "highly controlled
21 use" is undefined, vague, and ambiguous, as
22 it's used in your question.
23 Q. (By Mr. Holford) -- as you understand those terms?
24 A. I've already explained that I don't understand what
25 highly controlled means in the context of the Surgeon

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1 General's report; so, I don't understand it in that
2 question either. Sounds to me like Sam Allgood was
3 prepared.
4 Q. Do you know whether or not nicotine can cause that
5 kind of behavior?
6 MR. SHEFFLER: Objection. Behavior,
7 you're hypothesizing about?
8 Q. (By Mr. Holford) Do you understand my question?
9 A. I was trying to imagine how nicotine could cause Sam
10 Allgood to take 10 cartons and put them in his
11 freezer.
12 Q. Do you believe nicotine can cause that kind of
13 overall behavior?
14 A. No. Nicotine didn't do that. Sam Allgood did that.
15 Q. And nicotine, in your opinion, didn't play any part
16 in it; is that right?
17 A. What we're focusing on is cigarettes in the freezer
18 and cigarettes in the pockets and cigarettes that he
19 smoked. Was he responsible for that? Yes.
20 Q. And, in your opinion, nicotine didn't have any part
21 in it; is that right?
22 A. Well, the cigarettes played a part in it. That was
23 what he was doing was smoking cigarettes.
24 Q. Did the cigarettes have a part in causing him to take
25 those steps?

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1 MR. CRUSE: I object to that. He just
2 answered the question twice.
3 MR. RILEY: Asked and answered.
4 A. He wanted the cigarettes, and chose to buy them and
5 keep them around the way he did.
6 Q. (By Mr. Holford) And, in your opinion, in other
7 words, Sam Allgood was 100 percent responsible for
8 all of his conduct with cigarettes?
9 A. Yes.
10 Q. Okay. And the chemical, nicotine, in your opinion,
11 had no part then in responsibility for his conduct --
12 MR. RILEY: Asked and answered.
13 Q. (By Mr. Holford) -- with cigarettes, correct?
14 MS. FEE: Objection. Asked and
15 answered.
16 A. I've already answered the question.
17 Q. (By Mr. Holford) Okay. Well, do you agree with that?
18 A. You'll have to restate the question.
19 Q. Okay. Therefore, in your opinion, nicotine had no
20 part in the responsibility for Sam's conduct with
21 cigarettes?
22 MR. RILEY: Asked and answered.
23 A. That's right. Sam was responsible for his own
24 behavior.
25 Q. (By Mr. Holford) As part of the basis of your opinion

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1 that nothing in cigarettes prevents a smoker from
2 quitting, you say your years of experience in
3 addiction work; is that right?
4 A. Yes.
5 Q. What about that experience? What do you draw from
6 that to make this conclusion about smoking?
7 A. What conclusion are you talking about?
8 Q. That nothing in cigarettes prevents a smoker from
9 either deciding to quit smoking or from successfully
10 acting on such a decision.
11 A. That's my years of experience in dealing with
12 individuals who use various substances and including
13 smokers and knowing that they can stop that when they
14 choose to.
15 Q. So you have treated smokers who came to you wanting
16 to quit?
17 A. Only incidentally to other problems they have. I
18 have never run a smoking cessation program.
19 Q. Do you know how many people that you have
20 incidentally helped in quitting?
21 A. No. No.
22 Q. Well, I mean, is it more than ten?
23 A. Well, you're asking about 25 years of treating
24 patients and some of them have used various
25 substances and we have dealt with that as I have

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1 dealt with that as the patients bring in those
2 problems. And I cannot tell you how many patients I
3 have treated over the past 25 years or participated
4 in their treatment.
5 Q. But I only asked about people that you helped with
6 their smoking. I wanted to know how many people did
7 you help with their smoking.
8 A. And what I said was that I have never treated anybody
9 individually for nicotine use, tobacco use. It's
10 always been in the context of other problems that
11 they had.
12 Q. Well, you mean, if a person is under your care for a
13 cocaine addiction and they also smoke, would that be
14 an example?
15 A. It could be, if they want to stop that, too.
16 Q. Yeah. And they say, you know, "Dr. Hays, I want to
17 escape this cocaine addiction; and I also want to
18 stop smoking"?
19 A. Yes.
20 Q. Okay. And you say that's happened with people as
21 adjunct to their other problems you are dealing with
22 that told you that they wanted to stop smoking?
23 A. Yes.
24 Q. Okay. You don't have any idea how many of the people
25 who wanted to stop smoking, also, you have dealt

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 with?
2 A. I have no way of figuring how many patients I have
3 treated over the past 25 years or participated in
4 their treatment.
5 Q. For any substance, you mean --
6 A. That's right.
7 Q. -- cocaine, heroin, or nicotine?
8 A. Can't do it. That's right.
9 Q. Okay. Are you able to state any percentage of those
10 patients you have treated who, as part of their
11 treatment, wanted to quit smoking and under your
12 treatment actually did quit smoking?
13 A. I cannot tell you that.
14 Q. Is all you know that some patients that you have
15 helped in quitting smoking in adjunct with their
16 other treatment actually did quit? Do you know there
17 are some of those?
18 A. Yes.
19 Q. Okay. You don't know what percentage that is,
20 though, of the total you have helped, right?
21 MR. SHEFFLER: Asked and answered.
22 A. That's right.
23 MR. CRUSE: Asked and answered.
24 Q. (By Mr. Holford) Okay.
25 A. I do not know.

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1 Q. Do you know it's more than 10 percent?
2 MR. SHEFFLER: Objection.
3 MS. FEE: Objection.
4 MR. SHEFFLER: Asked and answered.
5 MS. FEE: Asked and answered.
6 A. I don't know.
7 Q. (By Mr. Holford) It could be less than 10 percent?
8 MR. SHEFFLER: Objection. Asked and
9 answered.
10 MS. FEE: Objection. Asked and
11 answered.
12 A. I don't know.
13 Q. (By Mr. Holford) Well, is my statement true; it could
14 be less -- I mean, the number of patients you had who
15 also had a smoking problem and you undertook to help
16 them quit smoking, can you say that the percent of
17 such people like that that did successfully quit
18 smoking under your care was more than 10 percent --
19 MR. SHEFFLER: Objection.
20 Q. (By Mr. Holford) -- of all those that you undertook
21 to help?
22 MR. SHEFFLER: Objection. Asked and
23 answered.
24 A. I have no way of knowing that.
25 Q. (By Mr. Holford) So that figure could be less than 10

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 percent?

2 MR. SHEFFLER: Objection. Asked and

3 answered.

4 MS. FEE: Objection. Asked and

5 answered.

6 MR. CRUSE: This is harassing and

7 mischaracterizing and trying too twist his

8 testimony around. He's told you he doesn't

9 know.

10 MR. SHEFFLER: I don't know that there

11 is a legitimate answer.

12 A. I have no way of knowing.

13 Q. (By Mr. Holford) How do you draw any basis for your

14 opinion out of that, your opinion that a cigarette

15 -- that nothing in cigarettes prevents a smoker from

16 quitting?

17 A. That's my understanding of the process of terminating

18 use of various substances and what cigarettes have

19 got in them that differs from some other substances;

20 and we have mentioned two other substances, alcohol

21 and cocaine, which deprive the individual of the

22 choice after they start using it to some extent. The

23 higher cortical powers that are depressed when an

24 individual takes on alcohol prevent them from

25 stopping --

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1 Q. When they are drunk.

2 MR. CRUSE: Let him finish.

3 A. -- when they start. That process of depressing the

4 central nervous system occurs. It's progressive

5 dependent on the amount of alcohol that's taken on

6 board and the individual progressively loses the

7 ability to make decisions. That doesn't happen with

8 tobacco.

9 Q. (By Mr. Holford) To the extent you can measure it,

10 right?

11 MR. SHEFFLER: Objection.

12 MR. CRUSE: It's argumentative.

13 Q. (By Mr. Holford) Is that correct?

14 A. That's my statement, yes.

15 Q. All right. So you are not basing your opinion that

16 nothing in cigarettes prevents a smoker from quitting

17 on any number of people you have helped quit smoking

18 as opposed to that you tried to help but didn't quit?

19 MR. CRUSE: I object to that. That's

20 mischaracterizing his testimony again.

21 Q. (By Mr. Holford) Right?

22 A. I'm not sure I understand your question. I think I

23 gave you the basis for the opinion that I stated.

24 Q. Well, I think you did; and I'm just trying to round

25 it out here, Dr. Hays.

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1 MR. SHEFFLER: I object to that.
2 Q. (By Mr. Holford) You're not saying that you know
3 there is nothing in cigarettes to prevent a smoker
4 from quitting because you have, in your 25-years'
5 experience, been asked to help 900 people who smoked
6 to quit; and more of them quit than didn't?
7 MR. SHEFFLER: Objection.
8 MR. CRUSE: I object --
9 MS. FEE: Objection.
10 MR. SHEFFLER: -- to the form of the
11 question.
12 Q. (By Mr. Holford) It's not that type of thing that
13 you're saying here when you point to your number of
14 years in working addiction to support your
15 opinion --
16 MR. CRUSE: That's a total --
17 Q. (By Mr. Holford) -- is that right?
18 MR. CRUSE: -- mischaracterization of
19 his testimony. It's just an absolute
20 falsehood, and I object to it for that
21 reason.
22 A. I guess I don't understand your question.
23 Q. (By Mr. Holford) Well, are you saying that you know
24 that there is nothing in cigarettes to prevent a
25 smoker from quitting because of any relation

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 numerically between the number of your patients that
2 you have undertaken to help quit smoking who quit
3 compared to the number that you undertook to help who
4 didn't quit?
5 MR. SHEFFLER: Object to the form of
6 the question.
7 Q. (By Mr. Holford) Is that true?
8 MR. SHEFFLER: Object to the form of
9 the question. This question has been asked
10 repetitively now. I have lost count of the
11 number of times.
12 Dr. Hays has repeatedly told you he
13 does not know the number of patients that
14 fall within that category; and, therefore,
15 the question has been asked and answered
16 many times.
17 A. I think I have answered the question.
18 Q. (By Mr. Holford) As far as your number of years in
19 work with addiction to substances goes, Dr. Hays, are
20 you basing your opinion that nothing in cigarettes
21 prevents a smoker from quitting only on what you
22 perceive to be differences between what nicotine does
23 to a smoker compared to what alcohol does to a
24 drinker or cocaine does to a cocaine user?
25 A. There are differences between cigarettes and the

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1 effects they have on an individual and the effects
2 that cocaine and alcohol have. They act
3 differently.
4 The ability of an individual who is using those
5 substances will -- the ability of the individual to
6 make decisions about continuing or stopping is
7 different for those substances.
8 Q. And are you drawing that conclusion solely from what
9 you perceive as the differences in the effects of the
10 substances on the user; that is, nicotine versus
11 alcohol and cocaine?
12 A. As opposed to what?
13 Q. Nicotine as opposed to alcohol and cocaine?
14 A. Well, I guess you were talking about only the
15 physical characteristics? Is that what the first
16 part of your question was?
17 Q. I didn't limit the characteristics, Dr. Hays.
18 I said: Do you agree there is a difference
19 between saying, "I think that nicotine affects its
20 users differently than cocaine or alcohol do"; and on
21 the other hand saying, "I have treated so many cases
22 of smoking of people wanting to quit and I have had
23 so many quit that I must conclude that anybody that
24 wants to really can"?
25 Now, do you agree that there is a difference

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1 between those two concepts?
2 MR. CRUSE: I object to the form of
3 the question. It was just nothing but a
4 bunch of statements. And then you talk
5 about concepts, just undefined and
6 ambiguous as to what the hell you're
7 talking about.
8 MR. HOLFORD: Mr. Cruse, I never saw
9 those words in a book of objections or any
10 learning that I ever had --
11 MR. CRUSE: Vague and ambiguous?
12
13 (Talking at the same time.)
14
15 MR. HOLFORD: Well, why don't you just
16 state your objections and leave the talk to
17 the final argument at the time of trial.
18 MR. CRUSE: I objected. I said you
19 said "those concepts"; that's what you
20 said. Those are undefined, vague, and
21 ambiguous; and you haven't been around much
22 if you haven't heard that as an objection.
23 MR. SHEFFLER: I object to the
24 colloquy that Mr. Holford is eliciting here
25 and I object to the fact that this is now a

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1 quarter after 7:00 and we have been at this
2 for some period of time and it's nothing
3 but repetitive and harassing questions.
4 MR. HOLFORD: Yeah, and I'll say that
5 the tobacco attorneys have had my experts
6 at depositions at never less than a full
7 day and up to four days in the case of two
8 of my experts.
9 MR. CRUSE: But we don't ask the same
10 questions over and over and over and over
11 and over.
12 Q. (By Mr. Holford) Do you want --
13 MR. ALLEN: And your characteriza-
14 tion --
15 Q. (By Mr. Holford) -- me to repeat that, Dr. Hays?
16 MR. ALLEN: I just want to put another
17 statement on the record.
18 Your characterization of the length of
19 those depositions is erroneous.
20 MR. CRUSE: It's mischaracterizing,
21 like everything has been for the last two
22 hours.
23 MR. HOLFORD: I'm not going to reply
24 to every misstatement you people make; I'll
25 tell you that right now.

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1 Q. (By Mr. Holford) Do you want me to restate that,
2 Dr. Hays?
3 A. Yeah. There is no way I can remember what the
4 question was.
5 Q. I don't blame you.
6
7 (Short Recess.)
8
9 Q. Okay. Dr. Hays, now I'm having to repeat that.
10 I'm asking you if you agree that one type of
11 basis for your opinion could be that, in your
12 opinion, nicotine, the effect on smokers, is
13 quantitatively and qualitatively different from that
14 of alcohol and cocaine to the degree that it affects
15 the user's ability to make decisions and about the
16 use, okay? That is one basis I'm suggesting.
17 And another independent would be: I'm a
18 psychologist. I have treated 900 patients over the
19 last 25 years -- and I'm only hypothesizing the
20 numbers. Let's just say: I have treated a large
21 number of patients over the years who came in for
22 other problems, but they also wanted to quit smoking.
23 And I don't know the numbers, but I certainly had
24 enough of those people who asked me actually quit
25 smoking out of the total number that I have had that

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1 have asked to help.
2 Now, do you agree that those are two separate
3 possible bases?
4 MR. CRUSE: Object to the form of the
5 question to the extent it's nothing more
6 than just broad statements.
7 A. I don't think you can do one without the other. I
8 think you have got to have some experience with
9 patients and I think you have got to apply what you
10 learned theoretically to those patients before you
11 can understand what's really going on with them.
12 And so, you know, you're talking on the one hand
13 about just opinion based on knowledge; and the other
14 one is based on experience only. I think you have to
15 combine the two.
16 Q. (By Mr. Holford) In this case, are you combining the
17 two?
18 A. Yes. I can't separate the years of clinical
19 experience that I have gotten from the theoretical
20 learning that I'm continuing to do. It's impossible
21 for me to do that.
22 Q. Okay. And so, is it your testimony -- no back up.
23 Now, again, you don't know how many people you
24 have helped try to quit smoking, right?
25 MR. CRUSE: Don't answer that

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1 question. We'll go to the court on that.
2 That's the tenth time you have asked that.
3 MR. HOLFORD: Are you advising the
4 professor?
5 MR. CRUSE: Yeah. I'm saying I
6 wouldn't answer it because you have asked
7 it a thousand times, and I would like to go
8 to the court on that.
9 Q. (By Mr. Holford) Okay. Are you going to follow his
10 advice?
11 A. I'll answer it the same way I've answered it. I have
12 no way of knowing how many individuals I have treated
13 who have, as part of their treatment program, wanted
14 to give up smoking.
15 Q. Okay. In fact, Dr. Hays, it could be that the
16 percent of those people that have asked you to help
17 them stop smoking and who actually ended up quitting
18 smoking is less than 10 percent --
19 MR. CRUSE: Objection. That --
20 MS. FEE: Objection.
21 Q. (By Mr. Holford) -- of the total number of people who
22 have asked you to help?
23 MR. CRUSE: That's the same thing.
24 It's already been asked and answered
25 again. He said he didn't know at least 50

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1 times.
2 MR. SHEFFLER: I object --
3 Q. (By Mr. Holford) That could be, couldn't it?
4 MR. SHEFFLER: I object on the bases
5 that the question is, No. 1, objectionable
6 as to form as it asks a possibility; No. 2,
7 it's objectionable on the basis that it's
8 been asked and answer repetitively; and No.
9 3, on the basis that it's now getting to
10 the point where it's harassing.
11 MR. CRUSE: It's past the point.
12 Q. (By Mr. Holford) Is that true?
13 A. I have answered the question, yes.
14 MR. CRUSE: Just for the record, when
15 you said, "I have answered question, yes,"
16 were you saying, "Yes, I have answered the
17 question"; or were you saying, "Yes," to
18 the question that Mr. Holford asked?
19 THE WITNESS: No.
20 Q. I'm saying, yes, I have answered the question.
21 MR. CRUSE: Okay.
22 Q. (By Mr. Holford) Are you able to testify that the
23 percent of people that have asked you for help to
24 quit smoking and that ended up quitting as opposed to
25 continuing smoking is more than 10 percent?

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1 MS. FEE: Objection. Asked and
2 answered.
3 A. I have answered the question before. I have no way
4 of knowing those percentages.
5 Q. (By Mr. Holford) You have no way of knowing whether
6 that percent is over 10 percent or under 10 percent,
7 right?
8 MS. FEE: Objection. Asked and
9 answered.
10 A. I have no way of knowing those percentages.
11 Q. (By Mr. Holford) Are you familiar with statistics
12 that show that, of all the people who attempt to quit
13 smoking, only one out of ten succeeds?
14 A. There are all kinds of smoking cessation studies out
15 there; and I have no way of knowing whether there is
16 one that says the percentage is one out of ten.
17 Q. Do you disagree with that percentage statement?
18 A. I neither agree with it nor disagree with it. If you
19 will give me a specific citation which I can go read,
20 then I can tell you whether or not that percentage is
21 10 percent.
22 Q. Is it consistent with your experience with smokers,
23 generally, that of all the smokers who attempted to
24 quit, one out of ten succeeded?
25 MS. FEE: Asked and answered.

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1 MR. RILEY: Asked and answered. It's
2 the same question all over again.
3 Q. (By Mr. Holford) Has that been true in your experience?
4 MS. FEE: Same objection.
5 MR. RILEY: Same objection.
6 A. I have no way of knowing those percentages.
7 Q. Oh, yeah. Okay.
8 MR. CRUSE: He forgot.
9 Q. (By Mr. Holford) So you don't know -- back up.
10 If the CDC, the Centers for Disease Control --
11 and, I'm sorry, I don't have that with me --
12 published data showing that their experience is that
13 10 percent of people who attempt to quit smoking
14 actually succeed in quitting, do you disagree with
15 that?
16 A. Well --
17 MR. SHEFFLER: Objection. You're
18 asking him to assume that they published
19 it?
20 MR. HOLFORD: Yes.
21 MR. SHEFFLER: Are you asking him to
22 assume that it's correct?
23 MR. HOLFORD: I'm asking if he agrees
24 with it or not.
25 MR. SHEFFLER: Well, how can he --

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1 MR. RILEY: He's already answered that
2 question.
3 MR. SHEFFLER: I object. How can he
4 -- if you're asking him to assume that it
5 was published by the CDC, are you asking
6 him to assume that it was correct when they
7 published it?
8 MR. RILEY: He's already answered the
9 question.
10 Q. (By Mr. Holford) Can you answer that?
11 A. No, I really can't.
12 Q. You don't know whether that's true or not?
13 A. No.
14 Q. I mean, is that correct; you don't know whether it's
15 true or not?
16 A. That's right. I don't know.
17 Q. Okay. In your opinion, Dr. Hays, how does nicotine
18 differ in its effect on smokers from cocaine's
19 effects on its user?
20 MR. SHEFFLER: Objection. This
21 question -- this exact question was asked
22 and answered repeatedly throughout the
23 deposition.
24 If you have anything to add to your
25 prior answers, Doctor, please do so.

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1 Q. (By Mr. Holford) I believe you stated that for
2 alcohol, but I haven't heard it for cocaine.
3 MR. SHEFFLER: You've asked the
4 question with respect to both.
5 A. That was my recollection, that I was addressing it
6 both for cocaine and alcohol; and we went through
7 that.
8 Q. (By Mr. Holford) All right. Now, the effect of
9 alcohol on the central nervous system of a drinker is
10 present only when the person is drinking; is that
11 right?
12 MR. SHEFFLER: Objection. Asked and
13 answered.
14 A. The effect of alcohol is present for some period of
15 time after the last ingestion of alcohol; and so,
16 for some period of time thereafter, that impaired
17 judgment is present.
18 Q. (By Mr. Holford) All right. So, yes, it takes awhile
19 to get over a drunk, right?
20 A. That's right.
21 Q. Okay. I'm sorry. Let me ask it again.
22 From the time that a person starts a drinking
23 episode to the time when that person's body has
24 finally metabolized all the alcohol in their system,
25 the alcohol in the person's system can be depressing

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1 their -- what did you say -- cortical vertex or...
2 A. Higher cortical centers, yes.
3 Q. All right. Higher cortical centers. But after that
4 process stops and there is no more alcohol in that
5 person's system, they have no longer any effect of
6 that alcohol, correct?
7 A. No, that's not true, either.
8 Q. What is true?
9 A. Well, there are continuing physiological effects to
10 alcohol, you know, in alcohol intoxication even after
11 the alcohol as metabolized. The body has got to
12 get back on an even keel, and that may take some
13 time.
14 For example, an individual gets dehydrated when
15 they drink; and so, that takes some time to go back
16 to normal.
17 Q. Okay. All right. But that is no longer the alcohol
18 affecting the person's system. It is simply the fact
19 that they are lacking water in their system; and it
20 takes awhile to get that back, right?
21 A. It's the residual effect of the alcohol use, yes.
22 Q. Okay.
23 A. So, you know, you can talk about the immediate
24 intoxicating effects; and you can talk about the more
25 long-range effects.

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1 Q. Well, but is it true that, when that drinker's last
2 bit of alcohol is gone from their body or their blood
3 system, that there no longer is any effect on that
4 person's higher cortical areas from alcohol?
5 A. That's a fair statement. If the alcohol is not
6 there, it can't be affecting the higher cortical
7 centers; the alcohol can't.
8 Q. And, consequently, there is no longer any effect on
9 the person's judgment and decision-making abilities
10 from alcohol, right?
11 A. That's right. If the alcohol is not there, it's not
12 impairing the judgment of the individual; the alcohol
13 is not.
14 Q. In your opinion, can nicotine impair human judgment
15 and decision-making abilities?
16 A. No.
17 Q. No matter how long a smoker smokes or how much they
18 smoke; is that right?
19 MR. CRUSE: He's answered the
20 question. Asked and answered. I object to
21 the question.
22 A. I think I answered the question.
23 Q. (By Mr. Holford) Well, I'm trying to measure it,
24 Dr. Hays. Do you mean to say --
25 MR. SHEFFLER: No means no.

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1 Q. (By Mr. Holford) -- no means never, regardless of how
2 much a person smokes for how long?
3 MR. SHEFFLER: Objection asked and
4 answered.
5 A. I think I answered the question.
6 Q. (By Mr. Holford) If a person has smoked at least a
7 pack and a half a day for 40 years, then is the
8 nicotine to any extent impairing the judgment and
9 decision-making abilities of that person about the
10 use of tobacco?
11 A. No.
12 MR. SHEFFLER: Note my objection to
13 the last question as asked and answered.
14 THE WITNESS: You should have been
15 faster.
16 MR. SHEFFLER: I tried. I tried.
17 It's getting long.
18 Q. (By Mr. Holford) So it is your opinion that the only
19 reason that a person continues to smoke is that they
20 like smoking, and it's no different than a person
21 continuing to eat sugar because they like sugar; is
22 that right?
23 A. Yes. It's a voluntary behavior, and people choose to
24 do it or not.
25 Q. Even after 40 years of smoking a pack and a half a

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1 day?

2 MR. SHEFFLER: Asked and answered.

3 Q. (By Mr. Holford) Is that right?

4 A. That's right. Even after 40 years.

5 Q. Do you know why the UT Medical Center and Health

6 Sciences Center and all are nonsmoking?

7 A. They think it has negative health consequences.

8 Q. Do you?

9 A. Do I what?

10 Q. Think that smoking has negative health consequences?

11 A. I think it probably does, yes.

12 Q. Do you think it causes lung cancer?

13 A. I don't know what specific illnesses it causes or

14 whether they are simply correlational relationships

15 between tobacco use and certain diseases; but yes,

16 there is an association between tobacco use and lung

17 cancer.

18 Q. So, if I use the term "risk factor," do you agree

19 that smoking is a risk factor for lung cancer?

20 A. Yes.

21 Q. It's a risk factor for laryngeal cancer?

22 A. Yes.

23 Q. It's a risk factor for chronic bronchitis?

24 A. Yes.

25 Q. It's a risk factor for emphysema?

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1 A. Yes.
2 Q. It's a risk factor for stroke?
3 MR. SHEFFLER: Objection to all this
4 line of questioning as you have not
5 qualified the doctor as an expert in the
6 risk factor relationship effect between
7 cigarette smokers and any disease.
8 Q. (By Mr. Holford) Do you agree with that?
9 A. Yes.
10 Q. Okay. Risk factor for coronary -- I can't think --
11 well, for heart attack?
12 A. Yes.
13 MR. SHEFFLER: How about cataracts?
14 Q. (By Mr. Holford) And do you agree that the risk of a
15 smoker getting these diseases that we have just
16 mentioned compared to the risk of a never smoker
17 range from 4 to 1 to something like 16 to 1?
18 MR. SHEFFLER: I object. I object to
19 the question because it is unintelligible.
20 I also object on the basis that the witness
21 has not been qualified or proffered as an
22 expert in the risk factor relationship
23 effect between cigarette smokers and any
24 disease.
25 Q. (By Mr. Holford) Do you know that?

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1 A. No, I don't know what the risk factors are in terms
2 of increased probability of a particular disease for
3 a smoker versus nonsmoker.
4 Q. Relative risks. You don't know what the various
5 relative risks for these different diseases are?
6 A. No.
7 Q. Okay. Do you know that the risk of a smoker as
8 against a nonsmoker for these diseases we just named
9 are significantly elevated?
10 MR. SHEFFLER: Objection on the basis
11 of my prior objection. The witness hasn't
12 been qualified or proffered in this area
13 and also the objection on the grounds that
14 "significant" is an undefined term.
15 A. Yeah. I don't know what the proportions are; so, I
16 can't answer your question.
17 Q. (By Mr. Holford) Are the proportions something that a
18 society is concerned about with smokers?
19 MR. SHEFFLER: Objection.
20 Q. (By Mr. Holford) I'm just saying: Is it a significant
21 elevation?
22 MR. SHEFFLER: Objection.
23 A. I have no way of answering that.
24 Q. (By Mr. Holford) Do you think that cigarettes -- I
25 mean, if you look at and take into account these

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1 risks of smoking cigarettes as against any possible
2 benefits you ascribe to them, that cigarettes are an
3 unreasonably dangerous product?
4 A. I don't think so.
5 Q. Why not?
6 A. Simply because individuals engage in risky behavior
7 doesn't mean that we should remove that choice from
8 them. And what you're talking about is, if this is
9 an unreasonable product, you're talking about
10 removing it from the range of choices of people.
11 Q. Well, I don't think that I put any question of the
12 user at all in what I asked you, Dr. Hays, or any
13 choices they make or are not able to make or any of
14 that.
15 MR. CRUSE: You asked him if it was
16 unreasonably dangerous. You're
17 mischaracterizing and misstating what you
18 said.
19 MS. FEE: He asked a risk utility
20 question.
21 Q. (By Mr. Holford) I'm asking you to take into account
22 the risks that we have discussed of using
23 cigarettes --
24 MR. SHEFFLER: Smoking.
25 Q. (By Mr. Holford) -- smoking them, as against any

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 benefit you can think of of smoking cigarettes, just
2 those two factors, measuring them. Do you conclude
3 from that measure alone that cigarettes are
4 unreasonably dangerous?
5 MR. SHEFFLER: I object.
6 MR. RILEY: The question has been
7 asked and answered.
8 MR. CRUSE: He just answered the
9 identical question.
10 Q. (By Mr. Holford) Then you can get to whatever other
11 observations or --
12 MR. CRUSE: He can answer however he
13 wants.
14 Q. (By Mr. Holford) -- you know, that you want to make,
15 but --
16 A. I thought I already answered that.
17 Q. Well, sir, I think you answered it by saying, in a
18 sense, if they were unreasonably dangerous, then you
19 would be taking them away from people; and that would
20 be depriving them of what you view as free choice.
21 MR. CRUSE: Read that answer back to
22 that question back before. I know you're
23 going to have to go back aways.
24 MR. HOLFORD: Read it back. Let's see
25 if I'm right.

Source: https://www.industrydocuments.ucsf.edu/docs/qfxl0001

1 MR. CRUSE: Because I think the first
2 thing he said is, no, I don't; or I don't
3 think so.
4 MR. SHEFFLER: He can give any
5 explanation that he feels is appropriate to
6 explain his answer.
7 MR. HOLFORD: Do you need this read
8 back?
9 MR. CRUSE: I do, because it's going
10 to show that you mischaracterized what he
11 said.
12 MR. HOLFORD: Well, if that's so, it's
13 on the record, Mr. Cruse. If it's read
14 back, I would like to at least know that
15 Dr. Hays wants it.
16 MR. CRUSE: Well, I want it.
17 MR. SHEFFLER: Mr. Cruse can ask, for
18 the record, that it be read back.
19 MR. HOLFORD: I don't care.
20 MR. CRUSE: Read it back. Read back
21 his answer to the very first question when
22 he first asked about risk versus benefit.
23
24 (The foregoing question and the
25 foregoing answer were read by the

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1 court reporter as follows:)
2 "Q. (By Mr. Holford) Do you think
3 that cigarettes -- I mean, if you look at
4 and take into account these risks of
5 smoking cigarettes as against any possible
6 benefits you ascribe to them, that
7 cigarettes are an unreasonably dangerous
8 product?
9 "A. I don't think so.
10 "Q. Why not?
11 "A. Simply because individuals
12 engage in risky behavior doesn't mean that
13 we should remove that choice from
14 them. And what you're talking about is, if
15 this is an unreasonable product, you're
16 talking about removing it from the range of
17 choices of people."
18
19 Q. (By Mr. Holford) Now, Dr. Hays, I'm going to ask you
20 to assume contrary to your opinion that, for addicted
21 smokers, their continuing to smoke is involuntarily.
22 Okay. Now, if you then compare the nonetheless
23 continuing risks of their smoking compared to
24 whatever other benefits they get from that smoking,
25 do you conclude that cigarette smoking is -- that

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1 cigarettes are an unreasonably dangerous product?
2 MR. CRUSE: I object to the form of
3 the question because you're asking him to
4 assume something as you very first put it
5 in your question, that he doesn't believe;
6 and then you're going on with the
7 question. It's impossible for him to
8 answer a question like that as an expert
9 witness.
10 MR. RILEY: He's most required to
11 accept your assumption.
12 Q. (By Mr. Holford) You understand I'm asking you to
13 take out of the equation any benefit you ascribe to
14 smoking because of any choice about continuing that
15 the smoker could make --
16 MR. CRUSE: Well, again, I have the
17 same objection. You're asking him to
18 assume stuff or factors that he disagrees
19 with in your question; and that way, the
20 form of the question is improper.
21 Q. (By Mr. Holford) -- in that a smoker who continues
22 long enough will be addicted and that, once addicted,
23 their smoking is involuntary? Let's say, most
24 smokers, that's true.
25 MS. FEE: Object to the form of the

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1 question.
2 MR. SHEFFLER: I object to the form of
3 the question, and I further object on the
4 basis that it assumes -- it requires an
5 assumption that's contrary to the doctor's
6 beliefs of not only his opinions, but also
7 his knowledge of the facts and,
8 furthermore, because the question assumes
9 that smokers smoke because of involuntary
10 acts and presumes that all of the other
11 reasons that they smoke don't exist either.
12 Therefore, I object to your question.
13 MR. HOLFORD: And, once again, you've
14 made a speech, Mr. Sheffler. I wish you
15 would -- I don't just wish; I would
16 request --
17 MR. SHEFFLER: Oh, come on.
18 MR. HOLFORD: -- you again to limit
19 your remarks to objections.
20 Q. All right, sir. Did I make my question understand-
21 able; or do you want me to say it again?
22 A. I think I understood your question, but I can't
23 accept that premise.
24 Q. So you will not answer that question?
25 A. I can't answer that question.

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1 Q. All right. What other benefit to smoking cigarettes
2 -- that is, other than what you see as the right to
3 make a voluntary choice about smoking -- are
4 comparable at all to these risks of smoking that we
5 have discussed?
6 MR. CRUSE: I object to the form the
7 question in that comparable is undefined
8 and it's -- the question doesn't make any
9 sense.
10 A. Individuals who smoke get a lot of pleasure from it.
11 That's evident in the testimony that we have in the
12 depositions in this case about Sam Allgood. He
13 enjoyed smoking. And I can't quantify that pleasure
14 and balance it against a risk. Each person has got
15 to do that for themselves, and that's what Sam
16 Allgood did.
17 Q. (By Mr. Holford) So what you do with the measure I
18 proposed to you is see it as an individual choice as
19 to how to make that balance?
20 A. Yes.
21 Q. Do you think the balance might be differently drawn
22 as to the risk of smoking against the benefits of
23 smoking if it were being made from a public health
24 service viewpoint?
25 A. There are lots of people around who would stop lots

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1 of things if they could do it. There are lots of
2 people who look at issues very narrowly, and that's
3 all I'll say in answer to that question.
4 MR. HOLFORD: Okay. All right.
5 That's all I have.
6 MR. CRUSE: We have a couple of
7 questions.
8 MR. SHEFFLER: Yeah, if you don't
9 mind, Doctor.
10 MR. HOLFORD: Well, let's see; it's
11 8:05 minus 15 is 7:50.
12 MR. CRUSE: No, no, you can't take
13 15. It wasn't 15.
14
15 E X A M I N A T I O N
16
17 BY MR. SHEFFLER:
18 Q. Doctor, you earlier talked about a model that
19 included tolerance, dependence, and relapse. Do you
20 recall that testimony?
21 A. Yes.
22 Q. And as that model applies, was that model applied, in
23 the way you're using it, to substances or behaviors?
24 A. Primarily to behaviors. And then you can apply that
25 to any substance you want to or any conduct, for that

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1 matter.
2 Q. So this model can be applied to behaviors that do not
3 involve ingestion of drugs?
4 A. Yes.
5 Q. And could the model be applied to exercise?
6 A. Yes. And I mentioned that earlier in my deposition.
7 Q. Could the model be applied to overeating?
8 A. Yes.
9 Q. Can this model be applied to sexual activity?
10 A. Yes.
11 Q. How about coffee drinking?
12 A. Yes.
13 Q. Can it be applied to working?
14 A. Yes.
15 Q. Doctor, Surgeon General Koop had made a statement
16 once before that people can be addicted to video
17 games. Do you recall him saying that?
18 A. No, I don't; but I wouldn't put it past him to say
19 something like that.
20 Q. Do you think he was using the model that you were
21 talking about to come to that conclusion?
22 A. The model could fit addiction to playing video games
23 and pinball machines, sure.
24 Q. If a person is addicted, as defined by that model of
25 tolerance, dependence and relapse, to, say, running

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1 or exercising, can they decide that they don't want
2 to run anymore?
3 A. Yes.
4 Q. Can they stop running?
5 A. Yes.
6 Q. Can they decide that they don't want to play video
7 games even if the Surgeon General Koop says they were
8 addicted, under that model, to playing video games?
9 A. Yes.
10 Q. Can they stop playing video games?
11 A. Yes.
12 Q. Can they decide that they don't want to drink coffee
13 anymore?
14 A. Yes.
15 Q. Can they decide that they don't want to overeat
16 anymore?
17 A. Yes.
18 Q. And go on a diet?
19 A. Yes.
20 Q. Doctor, are you familiar with the syndrome of
21 compulsive hand washing?
22 A. Yes.
23 Q. And can people exhibit compulsive fixations to
24 behaviors --
25 A. Yes.

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1 Q. -- other than hand washing?
2 A. Yes.
3 Q. Do people exhibit compulsive fixations to eating
4 certain foods?
5 A. Yes.
6 Q. Can they become compulsively fixated on certain
7 ingestions of substances?
8 A. Yes.
9 Q. And can people exhibit compulsive fixations on
10 smoking?
11 A. Yes.
12 Q. Now, you testified that a smoker could be said to
13 exhibit the criteria that would fit the model of
14 addiction that we were talking about earlier; do you
15 recall that?
16 A. Yes.
17 Q. And were you referring to those people who become
18 compulsively fixated on smoking?
19 A. Yes.
20 MR. HOLFORD: Objection. Leading.
21 Q. (By Mr. Sheffler) Well, what were you referring to
22 then, Doctor, in light of his objection?
23 MR. HOLFORD: Same objection.
24 A. Okay. If I can rephrase your question, Mr. Sheffler,
25 individuals who are compulsive users of various

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1 substances, including cigarettes, could the
2 tolerance, dependence, and relapse model fit them?
3 Is that your question?
4 Q. (By Mr. Sheffler) (Nodding.)
5 A. The answer is yes.
6 Q. And would that be an example of someone who's
7 compulsively fixated on substances?
8 MR. HOLFORD: Objection. Leading.
9 A. Could be, yes.
10 Q. (By Mr. Sheffler) Now, the vast majority of smokers,
11 in your opinion, Doctor, are they compulsively
12 fixated on smoking?
13 MR. HOLFORD: Objection. Leading.
14 A. Well, restate your question, Mr. Sheffler; I'm sorry.
15 Q. (By Mr. Sheffler) Are the vast majority of smokers,
16 Doctor, compulsively fixated on smoking?
17 MR. HOLFORD: Objection. Leading.
18 A. I would say no.
19 Q. (By Mr. Sheffler) How would you characterize the
20 behavior of the vast majority of smokers? Is it a
21 compulsive fixation or addiction, or is it a habit?
22 A. It's a habit.
23 MR. HOLFORD: Objection. Leading.
24 Q. (By Mr. Sheffler) I'm sorry. Your answer?
25 MR. HOLFORD: Same objection.

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1 A. It's a habit.
2 Q. (By Mr. Sheffler) Doctor, you mentioned before, in
3 talking about, when people quit smoking, there is a
4 lower heart rate sometimes exhibited.
5 MR. HOLFORD: Objection. Counsel
6 misstating testimony.
7 Q. (By Mr. Sheffler) Did I misstate your testimony?
8 A. No. That's accurate.
9 Q. Now, Doctor, is this lower heart rate something that
10 the smoker experiences and knows?
11 A. Probably not.
12 Q. When people quit any repetitive behavior, do they
13 exhibit frustration?
14 MR. HOLFORD: Objection. Leading.
15 A. They can, yes.
16 Q. (By Mr. Sheffler) Doctor, can this frustration that
17 is exhibited upon the cessation of a repetitive
18 behavior be exhibited by irritability?
19 MR. HOLFORD: Objection. Leading
20 and --
21 MR. CRUSE: It's not leading.
22 MR. HOLFORD: -- yeah, on two counts
23 of leading.
24 MR. SHEFFLER: Two counts?
25 MR. CRUSE: It's not leading on one.

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1 A. The answer is yes.
2 Q. (By Mr. Sheffler) How about frustration?
3 A. Yes.
4 Q. Anger?
5 A. Yes.
6 MR. HOLFORD: Objection to continuing
7 leading by Counsel.
8 MR. SHEFFLER: Okay.
9 Q. Anxiety?
10 MR. HOLFORD: Objection. Leading.
11 A. Yes.
12 Q. (By Mr. Sheffler) Difficulty in concentrating?
13 MR. HOLFORD: Same objection.
14 A. Yes.
15 Q. (By Mr. Sheffler) Restlessness?
16 MR. HOLFORD: Same objection.
17 A. Yes.
18 Q. (By Mr. Sheffler) Are those the criteria that have
19 been identified by the DSM-III-R as being what
20 happens upon cigarette cessation?
21 A. Yes.
22 MR. HOLFORD: Objection. Leading.
23 Q. (By Mr. Sheffler) Doctor, I'd like to hand you the
24 DSM-III-R, and I'd like to direct your attention to
25 the sentence that I have underlined there. Would you

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1 please read that for me?
2 A. In any given case, it is difficult to distinguish a
3 withdrawal affect from the emergence of psychological
4 traits that were suppressed, controlled, or altered
5 by the effects of nicotine or from a behavioral
6 reaction, e.g., frustration to the loss of a
7 reinforcer.
8 Q. Now, what does that mean, Doctor?
9 A. It means exactly what it says. It's difficult to
10 distinguish a withdrawal effect from the emergence of
11 psychological traits that were suppressed or
12 controlled by the effect of the nicotine.
13 In other words, let me translate it into --
14 well, I'll stick with nicotine.
15 If you're an irritable person and smoking helps
16 calm you and then you stop smoking, then your
17 irritable personality is going to come out.
18 Q. Okay. And it's difficult to know whether that
19 irritable person that was calmed by nicotine was --
20 the irritability was always there, and it just came
21 out when he quit?
22 MR. HOLFORD: Objection. Leading.
23 A. That's true, yes.
24 Q. (By Mr. Sheffler) And, Doctor, what does it mean that
25 it's difficult to distinguish that from the

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1 frustration that you experience when you quit any
2 reinforced behavior?
3 MR. HOLFORD: Same objection.
4 Q. (By Mr. Sheffler) The last part of that sentence. Is
5 that what you were talking about with the cessation
6 of repetitive behaviors leading to frustration?
7 MR. HOLFORD: Same objection.
8 Leading.
9 A. Yes.
10 Q. (By Mr. Sheffler) In light of Mr. Holford's objection,
11 what does that loss of reinforcer and frustration
12 mean in that sentence?
13 MR. HOLFORD: That doesn't cure it.
14 Leading.
15 A. The loss of reinforcer means that you have lost that
16 crutch that you have been using, and that's going to
17 lead to some difficulties.
18 Q. (By Mr. Sheffler) Frustration?
19 A. Yes.
20 Q. Okay.
21 A. Frustration or irritability, all the symptoms that
22 are noted here.
23 Q. Doctor, would you read from these -- well, this
24 bracketed section under "Complications."
25 A. Complications: Whether severe nicotine withdrawal

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1 decreases the ability to stop smoking or remain
2 abstinent from smoking is unknown.
3 Q. And, Doctor, does that mean that that has nothing to
4 do with quitting?
5 MR. HOLFORD: Objection. Leading.
6 Q. (By Mr. Sheffler) What does it mean, Doctor?
7 MR. HOLFORD: Same objection.
8 A. That means exactly what it says. It's unknown
9 whether or not nicotine withdrawal decreases the
10 ability to stop smoking or remain abstinent.
11 Q. (By Mr. Sheffler) Doctor, are you familiar with
12 heroin withdrawal?
13 A. Yes.
14 Q. Does it require detoxification?
15 A. Yes.
16 Q. What is detoxification?
17 A. Detoxification is when you take an individual who is
18 addicted to a particular substance and get them off
19 of that substance either by controlled reduction in
20 the amount that they use or using a substitute for
21 it.
22 Q. Doctor, does alcohol involve detoxification?
23 A. Yes.
24 Q. Now, are patients hospitalized for detoxification of
25 heroin and alcohol?

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1 A. Yes.
2 Q. Have you witnessed this?
3 A. Yes.
4 Q. Doctor, have you ever witnessed a patient who is
5 detoxified in a hospital situation for cigarette
6 smoking?
7 A. No.
8 Q. Does the withdrawal to heroin or alcohol involve
9 physical symptoms?
10 A. Yes.
11 Q. Are these physical symptoms something that the user
12 of heroin or the alcoholic experiences when he or she
13 quits?
14 A. Yes.
15 Q. And they realize what these symptoms are?
16 A. Yes.
17 Q. Do these symptoms, Doctor -- are they distressful for
18 the person?
19 A. Yes.
20 Q. And do these symptoms, in your opinion, Doctor, lead
21 to relapse and reuse?
22 A. Yes.
23 Q. Doctor, could you describe some of the physical
24 symptoms that an alcoholic or heroin user experiences
25 when they quit?

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1 A. The worst symptom an alcoholic experiences is
2 delirium and tremors, and they can have hallucina-
3 tions and delusions and so on.
4 Q. Can these symptoms result in death to the alcoholic?
5 A. Yes.
6 Q. Doctor, are you familiar with the term "physical
7 dependence"?
8 A. Yes.
9 Q. And, Doctor, are heroin and alcohol use associated
10 with physical dependence?
11 A. Yes.
12 Q. And is that because they result in physical symptoms
13 that interfere with a person's ability to quit using
14 those substances?
15 A. Yes.
16 Q. Now, Doctor, are there any physical symptoms
17 associated with smoking that smokers realize they are
18 experiencing when they quit smoking?
19 A. Not that I know of. The only one that I know occurs
20 is, in some instances, a slower heart rate; but
21 that's probably not detectible by the smoker.
22 Q. Doctor, does smoking cause physical dependence?
23 A. In terms of the physical symptoms that are present,
24 the only one that is present is th lower heart rate.
25 Q. Okay. And, Doctor, in your opinion, that has no

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1 effect on the smoker and his ability to quit smoking?
2 MR. HOLFORD: Objection. Leading.
3 A. No.
4 MR. SHEFFLER: Thank you very much.
5 That's all I have.
6 MR. CRUSE: It's what now? 8:15.
7
8 (Discussion off the record.)
9
10 MR. SHEFFLER: Doctor, let's go back
11 on the record for a minute.
12 Q. Doctor, you were given a subpoena duces tecum; do you
13 recall that?
14 A. Yes.
15 Q. And you spent time reviewing your files and pulling
16 documents at the request of Mr. Holford pursuant to
17 that subpoena; is that true?
18 A. Yeah.
19 Q. Would you estimate for us, Doctor, the amount of time
20 it took you to pull those records and the amount of
21 time and effort it took to have them copied for this
22 subpoena, if you could?
23 A. Yes. I got to the office at about 10:30 or a quarter
24 of 11:00 this morning after my clinic and began
25 looking through my records then and had my secretary

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1 copy the ones I could find; and it took about an
2 hour, I guess.
3 MR. SHEFFLER: We're going to add that
4 to the bill.
5
6 FURTHER EXAMINATION
7
8 BY MR. HOLFORD:
9 Q. Doctor, did you spend an hour in the active
10 involvement of that?
11 A. I took at least that looking through materials,
12 trying to find what I was looking for and pulling
13 them out of the folders.
14 And some of these articles that I gave you are
15 several years old. That took time to find them. I
16 had to go from -- from the subpoena, I had to find
17 out what those were in the CV; and I had to go find
18 them in the files.
19 MR. HOLFORD: Well, I believe what
20 plaintiffs owe, Dr. Hays, for your time at
21 this deposition is 6 hours, from 2:00
22 o'clock till 8:00 o'clock tonight.
23 I'm aware that -- I think one -- I
24 think Dr. Patrick Remington, argued for
25 some recompense for time in digging up

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1 things, which was extremely substantial.
2 You're not talking about an hour; you're
3 talking about like a half a day or
4 something.
5 MR. SHEFFLER: Doug, do we need to put
6 this on the record?
7 MR. HOLFORD: Yes, we do. But all my
8 other experts were not compensated for that
9 time.
10 MR. CRUSE: What are you saying? Four
11 hours, you should get paid; one hour, you
12 shouldn't?
13 MR. HOLFORD: Six hours, from 2:00 to
14 8:00. Now, do you want me to write that
15 check?
16 THE WITNESS: I can either bill you,
17 or you can write a check.
18 MR. HOLFORD: Well, I'll write it now,
19 if you'll take it now.
20 MR. SHEFFLER: It's 7 hours, what
21 you've got.
22 MR. HOLFORD: What? No.
23 THE WITNESS: Whatever you want to
24 write it for, I'll put it in my pocket; and
25 we'll send you a receipt.

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1 MR. SHEFFLER: And we'll send you a
2 bill for the other hour.
3 MR. HOLFORD: Well, you can try what
4 you would like. I stated my basis.
5
6 (Hays Exhibit No. 1-A was
7 marked for identification.)
8
9 (Signature was required.)
10
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(SIGNATURE PAGE FOR THE DEPOSITION OF J. RAY HAYS, Ph.D. - March 29, 1994.)

J. RAY HAYS, Ph.D.

THE STATE OF TEXAS :

COUNTY OF HARRIS :

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 11th day of May, 1994.

Notary Public in Harris County
In and for the State of Texas.

DIANA RODRIGUEZ
MY COMMISSION EXPIRES
March 22, 1997

My commission expires:
3/22/97

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STATE OF TEXAS :

COUNTY OF HARRIS :

REPORTER'S CERTIFICATION TO THE DEPOSITION OF

J. RAY HAYS, Ph.D., TAKEN MARCH 29, 1994

I, DONNA J. SORENSON, Certified Shorthand Reporter in and for the State of Texas, hereby certify that this deposition transcript is a true record of the testimony given by the witness named herein, after said witness was duly sworn/affirmed by me.

I further certify that I am neither attorney nor counsel for, related to, nor employed by any of the parties to the action in which this testimony was taken.

Further I am not a relative or employee of any attorney of record in this case, nor do I have a financial interest in the action.

Further certification requirements will be certified to after they have occurred.

SUBSCRIBED AND SWORN TO on this the 19th day of April, 1994.

Donna J. Sorenson

DONNA J. SORENSON
Certified Shorthand Reporter
Certification No. 799
Expiration date: 12-31-94

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C O R R E C T I O N S

DEPOSITION OF J. RAY HAYS, Ph.D. DATE 5/11/94

PAGE	LINE	FROM	TO	REASON FOR CHANGE

WITNESS

(J. Ray Hays, Ph.D.'s signature)

STATE OF TEXAS

COUNTY OF HARRIS

SUBSCRIBED AND SWORN TO as true and correct on ~~this the~~ ~~11th day~~ of May, 1994.

DIANA RODRIGUEZ
MY COMMISSION EXPIRES
March 22, 1997

NOTARY PUBLIC

My commission expires:
3/22/97

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1 deposition shall be taken pursuant to the Federal Rules of
2 Civil Procedure.
3 IT WAS FURTHER STIPULATED AND AGREED that the
4 witness may have the opportunity to read his deposition
5 and sign it before any notary public.
6
7
8
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